Calendar No. 378

93D CONGRESS
1st Session

SENATE

REPORT
No. 93-402

SURFACE MINING RECLAMATION ACT OF 1973

REPORT

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 425

SEPTEMBER 21, 1973.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1973

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CONTENTS

	Page
S. 425, as reported	1
I. Purpose	32
II. Need	33
III. Major provisions	40
IV. Committee recommendation	47
V. Legislative history	47
VI. Section-by-section analysis	48
VII. Tabulation of votes cast in committee	78
VIII. Cost estimates pursuant to section 252 of the Legislative Reorganization Act of 1970	79
IX. Executive communications	79
X. Changes in existing law	94

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Mr. METCALF, from the Committee on Interior and Insular Affairs submitted the following

REPORT

[To accompany S. 425]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 425) to provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following language:

That this Act may be cited as the "Surface Mining Reclamation Act of 1973".

CONTENTS

TITLE I—STATEMENT OF FINDINGS AND POLICY

Sec. 101. Findings.
Sec. 102. Purposes.

TITLE II—EXISTING AND PROSPECTIVE SURFACE MINING AND RECLAMATION OPERATIONS

Sec. 201. Grant of authority: promulgation of Federal regulations.
Sec. 202. Office of Surface Mining, Reclamation, and Enforcement.
Sec. 203. Surface mining operations not subject to this Act.
Sec. 204. State authority; State programs.
Sec. 205. Federal programs.

Sec. 206. Surface mining operations pending State compliance.
Sec. 207. Permits.
Sec. 208. Permit application requirements: Information, insurance, and reclamation plans.
Sec. 209. Permit application approval procedures.
Sec. 210. Performance bonds.
Sec. 211. Release of performance bonds or deposits.
Sec. 212. Revision and revocation of permits.
Sec. 213. Criteria for surface mining and reclamation operations.
Sec. 214. Inspections.
Sec. 215. Federal enforcement.
Sec. 216. Designation of land areas unsuitable for surface mining.
Sec. 217. Federal lands.
Sec. 218. Public agencies, public utilities, and public corporations.
Sec. 219. Citizen suits.

TITLE III—ABANDONED AND UNRECLAIMED MINED AREAS

Sec. 301. Abandoned mine reclamation fund.
Sec. 302. Acquisition and reclamation of abandoned and unreclaimed mined areas.
Sec. 303. Filling voids and sealing tunnels.

TITLE IV—STUDIES OF SURFACE MINING AND RECLAMATION

Sec. 401. Study of reclamation standards.
Sec. 402. A study of means to maximize resource recovery and minimize environmental impacts in mining for coal and other minerals.
Sec. 403. Indian lands study.

TITLE V—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

Sec. 501. Definitions.
Sec. 502. Advisory committees.
Sec. 503. Grants to the States.
Sec. 504. Research and demonstration projects.
Sec. 505. Grant authority for other minerals.
Sec. 506. Annual report.
Sec. 507. Authorization of appropriations.
Sec. 508. Temporary suspension.
Sec. 509. Other Federal laws.
Sec. 510. State laws.
Sec. 511. Protection of the surface owner.
Sec. 512. Preference for persons adversely affected by the Act.
Sec. 513. Severability.

TITLE I—STATEMENT OF FINDINGS AND POLICY

SEC. 101. FINDINGS.—The Congress finds and declares that—

(1) extraction of coal and other minerals from the earth can be accomplished by various methods of mining, including surface mining;

(2) extraction of minerals by surface mining operations is a significant and essential activity which contributes to the economic, social, and material well-being of the Nation;

(3) many surface mining operations result in disturbances of surface areas that burden and adversely affect commerce and the public welfare by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural, and forestry purposes, by causing erosion and landslides, by contributing to floods, by polluting the water, by destroying fish and wildlife habitat, by impairing natural beauty, by damaging the property of citizens, by creating hazards dangerous to life and property, by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water, and other natural resources;

(4) surface mining and reclamation technology are now developing so that effective and reasonable regulation of coal surface mining operations by the States and by the Federal Government in accordance with the requirements of this Act is an appropriate and necessary means to minimize so far as practicable the adverse, social, economic, and environmental effects of such mining operations;

(5) because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the States; and

(6) while there is a need to regulate surface mining operations for minerals other than coal, more data and analyses are needed to serve as a basis for effective and reasonable regulation of such operations.

SEC. 102. PURPOSES.—It is the long-term goal of Congress to prevent the adverse effect to society and the environment resulting from surface mining operations. Toward that end, it is the purpose of this Act to—

(1) establish a nationwide program in accordance with the policy and objectives of the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a);

(2) assure that the rights of surface landowners and persons with a valid legal interest in the land are fully protected from such operations;

(3) assure that coal surface mining operations are not conducted where reclamation as required by this Act is not feasible;

(4) assure that coal surface mining operations are so conducted as to prevent degradation to land and water;

(5) assure that adequate measures are undertaken to reclaim surface areas as contemporaneously as possible with the coal surface mining operations;

(6) assist the States in developing and implementing such a program;

(7) wherever necessary, exercise the full reach of Federal constitutional powers to insure the protection of the public interest through the effective control of coal surface mining operations;

(8) provide a means for development of the data and analyses necessary to establish effective and reasonable regulation of surface mining operations for other minerals; and

(9) strike a balance between protection of the environment and the Nation's need for coal as an essential source of energy.

TITLE II—EXISTING AND PROSPECTIVE SURFACE MINING AND RECLAMATION OPERATIONS

SEC. 201. GRANT OF AUTHORITY: PROMULGATION OF FEDERAL REGULATIONS.—(a) Not later than six months after the date of enactment of this Act, the Secretary, in accordance with the requirements of this Act, and the procedures set forth in this section, shall publish in the Federal Register regulations covering surface mining and reclamation operations for coal which shall set forth in reasonable detail those actions which a State must take to develop a State Program and otherwise meet the requirements of this Act.

(b) Such regulations shall not be published until the Secretary has first published proposed regulations in the Federal Register, afforded interested persons and State and local governments a period of not less than forty-five days after publication to submit written comments and held one or more public hearings on the proposed regulations. The date, time, and place of such hearings shall be set out in the notice of proposed rule making. The Secretary shall, after considerations of all comments and relevant matter presented, publish the regulations with such modifications from the proposed regulation as he may deem appropriate.

(c) The Administrative Procedure Act shall be applicable to the administration of this Act: *Provided*, That whenever procedures provided for in this Act are in conflict with the Administrative Procedure Act, the provisions of this Act shall prevail.

SEC. 202. OFFICE OF SURFACE MINING, RECLAMATION, AND ENFORCEMENT.—(a) There is hereby established in the Department of the Interior the Office of Surface Mining, Reclamation, and Enforcement.

(b) The Office shall have a Director who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate provided for level V of the Executive Schedule Pay Rates (5 U.S.C. 5315), and such other employees as may be required. The Director shall have the responsibilities provided for under this Act and such duties and responsibilities as the Secretary of the Interior may assign. Employees of the Office shall be recruited on the basis of their professional competence and capacity to administer objectively the provisions of this Act. Employees may be recruited from the United States Geological Survey, the Bureau of Mines, the Bureau of Land Management, and other departments and agencies of the Federal Government which have expertise pertinent to the responsibilities of the Office. No legal authority which has as its purpose promoting the development or use of coal or other mineral resources, shall be transferred to the Office.

(c) The Secretary, acting through the Office, shall—

(1) administer the State grant-in-aid program for the development of State programs for surface mining and reclamation operations provided for in title IV of this Act;

(2) administer the grant-in-aid program to the States for the purchase and reclamation of abandoned and unreclaimed mined areas pursuant to title III of this Act;

(3) administer the surface mining and reclamation research and demonstration project authority provided for in section 504 of this Act;

(4) develop and administer any Federal programs for surface mining and reclamation operations which may be required pursuant to this title and review State programs for surface mining and reclamation operations pursuant to this title;

(5) consult with other agencies of the Federal Government having expertise in the control and reclamation of surface mining operations and assist States, local governments, and other eligible agencies in the coordination of such programs;

(6) maintain a continuing study of surface mining and reclamation operations in the United States;

(7) develop and maintain a Surface Mining and Reclamation Information and Data Center and make the information maintained at the Data Center available to the public and to Federal, regional, State, and local agencies conducting or concerned with land-use planning and agencies concerned with surface mining and reclamation operations;

(8) assist the States in the development of State programs for surface mining and reclamation operations which meet the requirements of this Act and, at the same time, reflect local requirements and local environmental conditions; and

(9) assist the States in developing objective scientific criteria and appropriate procedures and institutions for determining those areas of a State to be designated unsuitable for all or certain types of mining pursuant to section 216, and

(10) monitor all Federal and State research programs dealing with coal extraction and use and recommend research projects designed to (1) improve the feasibility of underground coal mining and (2) develop improved techniques of surface mining and reclamation.

SEC. 203. SURFACE MINING OPERATIONS NOT SUBJECT TO THIS ACT.—(a) The provisions of this Act shall not apply to any of the following activities:

(1) the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him; and

(2) the extraction of coal for commercial purposes where the surface mining operation affects two acres or less.

SEC. 204. STATE AUTHORITY; STATE PROGRAMS.—(a) A State, to be eligible to receive financial assistance provided for under titles III and V of this Act and to be eligible to assume exclusive jurisdiction, except as provided by section 215 and title III of this Act, over surface mining and reclamation operations on lands within such State, shall—

(1) have appropriate legal authority under State laws to regulate surface mining and reclamation operations in accordance with the requirements of this Act;

(2) provide sanctions under State law for violations of State laws, regulations, or conditions of permits concerning surface

mining and reclamation operations which meet the requirements of this Act, such sanctions to include civil and criminal penalties, forfeiture of bonds, withholding of permits, and the issuance of cease-and-desist orders by the State regulatory authority or its inspectors;

(3) have available sufficient administrative and technical personnel, adequate interdisciplinary expertise, and sufficient funding to enable the State to regulate surface mining and reclamation operations in accordance with the requirements of this Act;

(4) submit to the Secretary for approval in accordance with the requirements of this Act a State program which provides for the effective implementation, maintenance, and enforcement of a permit system for the regulation of surface mining and reclamation operations for coal on lands within such State;

(5) include in any State program a process for coordinating the review and issuance of permits for surface mining and reclamation operations with any other Federal or State permit process applicable to the proposed operation; and

(6) have established a process for designation of areas as unsuitable for surface mining in accordance with section 216 and be actively conducting a review of potential surface mining areas within its boundaries.

(b) The Secretary shall not approve any State program submitted by a State pursuant to this section until:

(1) he has solicited the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed State Program; and

(2) he has provided an opportunity for a public hearing on the State Program within the State.

(c) The Secretary shall, within four calendar months following the submission of any State Program, approve or disapprove such State Program or any portion thereof. The Secretary shall approve a State Program if he determines that the State Program meets or exceeds the requirements of this Act.

(d) If the Secretary disapproves any proposed State Program, he shall notify the State in writing of his decision and set forth in detail the reasons therefor. The State shall have sixty days in which to resubmit a revised State Program.

(e) For the purposes of this section and section 205, the inability of a State to take any action the purpose of which is to prepare, submit or enforce a State Program, or any portion thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not result in a loss of eligibility for financial assistance under titles III and V of this Act or in the imposition of a Federal Program. Regulation of the surface mining and reclamation operations covered or to be covered by the State Program subject to the injunction shall be conducted by the State until such time as the injunction terminates or for one year, whichever is shorter, at which time the requirements of sections 204 and 205 shall again be fully applicable.

SEC. 205. FEDERAL PROGRAMS.—(a) The Secretary shall prepare and, subject to the provisions of this section, promulgate and implement a Federal Program for a State if such State—

(1) fails to submit a State Program covering surface mining and reclamation operations within twelve months of the promulgation of the Federal regulations for such operations;

(2) fails to resubmit an acceptable State Program within sixty days of disapproval of a proposed State Program: *Provided*, That the Secretary shall not implement a Federal Program prior to the expiration of the initial period allowed for submission of a State Program as provided for in clause (1) of this subsection; or

(3) fails to enforce its approved State Program as provided for in this Act.

If State compliance with clause (1) of this subsection requires an act of the State legislature the Secretary may extend the period for submission of a State program up to an additional six months. Promulgation and implementation of a Federal program vests the Secretary with exclusive jurisdiction for the regulation and control of surface mining and reclamation operations taking place on lands within any State not in compliance with this Act. After promulgation and implementation of a Federal program the Secretary shall be the regulatory authority. In promulgating and implementing a Federal program for a particular State the Secretary shall take into consideration the nature of that State's terrain, climate, biological, chemical, and other relevant physical conditions.

(b) Prior to promulgation and implementation of any proposed Federal program, the Secretary shall give adequate public notice and hold a public hearing in the affected State.

(c) Permits issued pursuant to an approved State program shall be valid but reviewable under a Federal program. Immediately following promulgation of a Federal program, the Secretary shall undertake to review such permits to determine that the requirements of this Act are not violated. If the Secretary determines any permit to have been granted contrary to the requirements of this Act, he shall so advise the permittee and provide him a reasonable opportunity for submission of a new application and reasonable time to conform ongoing surface mining and reclamation operations to the requirements of the Federal program.

(d) (1) If a State submits a proposed State program to the Secretary after a Federal program has been promulgated and implemented pursuant to this section, and if the Secretary approves the State program, the Federal program shall cease to be effective thirty days after such approval. Permits issued pursuant to the Federal program shall be valid but reviewable under the approved State program. The State regulatory authority may review such permits to determine that the requirements of this Act and the approved State program are not violated. If the State regulatory authority determines any permit to have been granted contrary to the requirements of the Act or the approved State program, he shall so advise the permittee and provide him a reasonable opportunity for submission of a new application and

reasonable time to conform ongoing surface mining and reclamation operations to the requirements of the Act or approved State program.

(2) Whenever a Federal program is promulgated for a State pursuant to this Act, any statutes or regulations of such State which are in effect to regulate surface mining and reclamation operations subject to this Act shall, insofar as they interfere with the achievement of the purposes and the requirements of this Act and the Federal program, be preempted and superseded by the Federal Program.

(e) Any Federal program shall include a process for coordinating the review and issuance of permits for surface mining and reclamation operations with any other Federal or State permit process applicable to the proposed operation.

SEC. 206. SURFACE MINING OPERATIONS PENDING STATE COMPLIANCE.—From the date of enactment of this Act until twenty-two months after such date (plus the period of any extension granted under section 205(a)) no person shall open or develop any new or previously mined and abandoned site for coal surface mining operations on lands within any State, or expand by more than 15 per centum the area of land affected in the preceding twelve months by a coal surface mining operation existing on the date of enactment of this Act unless such person has first obtained an interim permit issued by the appropriate State regulatory authority which may issue such interim permits upon application made by the operator. Such application and permit shall be in accordance with the requirements of this Act.

SEC. 207. PERMITS.—(a) After the expiration of the twenty-two month period (plus the period of any extension granted under section 205(a)) following the date of enactment of this Act, no person shall engage in or carry out on lands within a State any surface mining operations unless such person has first obtained a permit issued by such State pursuant to an approved State Program or by the Secretary pursuant to a Federal Program, except that a person conducting surface mining operations existing at the date of enactment of this Act may conduct such operations without a permit beyond such period if an application for a permit with respect to such operations has been filed, but the initial administrative decision has not been rendered. It is the sense of Congress that administrative or judicial appeals in connection with permit applications shall be granted the highest priority and preference in all courts and be resolved as expeditiously as possible.

(b) The term of any permit for surface mining and reclamation operations shall not exceed five years if issued pursuant to an approved State program and shall be for five years if issued pursuant to a Federal program. Each permit shall carry with it a right of successive renewals if the permittee has complied with the requirements of the approved State program or a Federal program for the State within which the operations are conducted and has the capability to implement the reclamation plan applicable to the operations covered by the permit. Prior to approving the renewal of any permit the regulatory authority shall review the permit and the surface mining and reclamation operations and may require such new conditions and requirements as are necessary to deal with changing circumstances. A permit shall be renewed by operation of law unless prior to expiration of the

permit term the permittee has been given timely notice and a hearing in accordance with the rules and regulations of the regulatory authority and the regulatory authority has found that the requirements for renewal have not been satisfied.

(c) A permit shall terminate if the permittee has not commenced the surface mining and reclamation operations covered by such permit within three years of the issuance of the permit.

SEC. 208. PERMIT APPLICATION REQUIREMENTS: INFORMATION, INSURANCE, AND RECLAMATION PLANS.—(a) Each application for a permit under a State program or Federal program pursuant to the provisions of this Act shall include as a minimum the following information—

(1) the names and addresses of (A) the permit applicant; (B) every legal owner of record of the property (surface and mineral) to be mined; (C) the holders of record of any leasehold interest in the property; (D) any purchaser of record of the property under a real estate contract; (E) the operator if he is a person different from the applicant; and (F) if any of these are business entities other than a single proprietor, the names and addresses of the principals, officers, and resident agent;

(2) the names and addresses of the owners of record of all surface area within five hundred feet of any part of the permit area;

(3) a statement of any current or previous mining permits in the State held by the applicant and the permit numbers;

(4) if the applicant is a partnership, corporation, association, or other business entity, the following where applicable (A) the name and address of each partner owning 3 per centum or more of the partnership, and (B) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote;

(5) a statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant, has ever held a Federal or State mining permit which subsequent to 1960 has been suspended or revoked or has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved;

(6) such maps and topographical information, including the location of all underground mines in the area, as the regulatory authority may require which shall be in sufficient detail to clearly indicate the nature and extent of the overburden to be disturbed, the coal to be mined, and the drainage of the area to be affected;

(7) a copy of the applicant's advertisement of the ownership, location, and boundaries of the proposed site of the surface mining and reclamation operations, such advertisement shall be placed in a newspaper of general circulation in the locality of the proposed site at least once a week for four successive weeks and may be submitted to the regulating authority after the application is filed;

(8) the anticipated starting date of the proposed operation;

(9) the number of acres of land to be affected by the proposed operation;

(10) the name of the watershed and location of the surface stream or tributary into which surface and pit drainage will be discharged;

(11) evidence of the applicant's legal right to enter and commence surface mining operations on the area affected;

(12) when requested by the regulatory authority, the climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges; and

(13) such other information as the regulatory authority may require.

(b) Each applicant for a permit shall be required to submit to the regulatory authority as part of the permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which such permit is sought, or evidence that the applicant has satisfied other State or Federal self-insurance requirements. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface mining and reclamation operations and entitled to compensation under the applicable provisions of State law. Such policy shall be maintained in full force and effect during the term of the permit or any renewal, including the length of all reclamation operations.

(c) Each applicant for a permit shall be required to submit to the regulatory authority as part of the permit application a reclamation plan which shall meet the requirements of this Act.

Sec. 209. Permit Application Approval Procedures.—(a) The regulatory authority shall notify the applicant for a permit within a period of time established by law or regulation whether the application has been approved or disapproved. If approved, the permit shall be issued after the performance bond or deposit required by section 210 has been filed. If the application is disapproved, specific reasons therefor must be set forth in the notification. Within thirty days after the applicant is notified that the permit or any portion thereof has been denied, the applicant may request a hearing on the reasons for said disapproval. A hearing shall be held within thirty days of the request. Within thirty days after the hearing the regulatory authority shall issue and furnish the applicant the written decision of the regulatory authority granting or denying the permit in whole or in part and stating the reasons therefor.

(b) No permit will be issued unless the regulatory authority finds that (1) all the requirements of this Act and the State or Federal Program have been complied with, and (2) the applicant has demonstrated that reclamation as required by this Act and the State or Federal Program can be accomplished under the Reclamation Plan contained in the permit application.

(c) The regulatory authority shall not issue any new surface mining permit or renew or revise any existing surface mining permit of any operator if it finds that the applicant or operator has failed and continues to fail to comply with any of the provisions of any State or Federal Program.

(d) Any person having an interest which is or may be adversely affected by the proposed surface mining and reclamation operations or any Federal, State, or local governmental agency having responsibilities affected by the proposed operations shall have the right to file written objections to any permit application within thirty days after the last publication of the advertisement pursuant to clause 208(a)(7). If written objections are filed, the regulatory authority shall hold a public hearing in the locality of the proposed surface mining and reclamation operations within thirty days of the receipt of such objections and after appropriate notice and publication of the date, time, and location of such hearing.

(e) Any person or government agency having an interest which is or may be adversely affected by the proposed surface mining operations, who has participated in the administrative procedures as an applicant, protestant, or objector, and who is adversely affected or aggrieved by the decision of the regulatory authority shall be entitled to judicial review of such decision by a court of competent jurisdiction in accordance with State or Federal law. Where Federal jurisdiction exists it shall be exercised by the United States district court for the district in which the proposed surface mining operation is situated.

SEC. 210. PERFORMANCE BONDS.—(a) After a surface mining and reclamation permit application has been approved but before such a permit is issued, the applicant shall file with the regulatory authority, on a form prescribed and furnished by the regulatory authority, a bond for performance payable, as appropriate, to the United States or to the State, and conditioned upon faithful performance of all the requirements of this Act and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface mining and reclamation operations within the initial term of the permit. As succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the regulator authority an additional bond or bonds to cover such increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit and shall be determined by the regulatory authority on the basis of at least two independent estimates. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by a third party in the event of forfeiture and in no case shall the bond be less than $10,000.

(b) Liability under the bond shall be for the duration of the surface mining and reclamation operation and for a period of five years thereafter, except in those areas where the average annual rainfall is 26 inches or less, the period of liability shall extend for ten years, unless sooner released as hereinafter provided in this Act. The bond shall be executed by the operator and a corporate surety licensed to do business in the State where such operation is located, except that the operator may elect to deposit cash, negotiable bonds of the United States Government or such State, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.

(c) The regulatory authority may require a deposit or accept the bond of the applicant itself, when the applicant demonstrates to the satisfaction of the regulatory authority the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond such amount.

(d) The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the regulatory authority from time to time as affected land acreages are increased or where the cost of future reclamation obviously changes.

SEC. 211. RELEASE OF PERFORMANCE BONDS OR DEPOSITS.—(a) The permittee may file a request with the regulatory authority for the release of all or part of the performance bond or deposit. Within thirty days after any application for bond or deposit release has been filed with the regulatory authority, the operator shall submit a copy of an advertisement placed on five successive days in a newspaper of general circulation in the locality of the surface mining operation. Such advertisement shall be considered part of any bond release application and shall contain a notification of the location of the land affected, the number of acres, the permit number and the date approved, the amount of the bond filed and the portion sought to be released, and the type of reclamation work performed. In addition, as part of any bond release application, the applicant shall submit copies of letters which he has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities, or water companies in the locality in which the surface mining and reclamation activities took place, notifying them of his intention to seek release from the bond.

(b) The regulatory authority may release in whole or in part said bond or deposit if the authority is satisfied that reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this Act: *Provided, however*, That—

(1) no bond shall be fully released until all reclamation requirements of this Act are fully met, and

(2) an inspection and evaluation of the affected surface mining and reclamation operations is made by the regulatory authority or its authorized representative prior to the release.

(c) If the regulatory authority disapproves the application for release of the bond or portion thereof, the authority shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release. The permittee shall be afforded a reasonable period of time to take such corrective actions.

(d) If requested by any person having an interest which is or may be adversely affected by the failure of the permittee to have complied with the requirements of this Act or by any Federal, State, or local governmental entity, the regulatory authority shall, within 30 days after appropriate public notice, hold a public hearing on the surface mining and reclamation operations covered by a performance bond. Such hearing shall be held after the release of 50 per centum or more and prior to the release of 90 per centum of such bond.

SEC. 212. REVISION AND REVOCATION OF PERMITS.—(a) Once granted a permit may not be revoked unless: (1) the regulatory authority gives

the permittee prior notice of violation of the provisions of the permit, the State Program or Federal Program, or this Act and affords a reasonable period of time of not less than fifteen days or more than one year within which to take corrective action; and (2) the regulatory authority determines, after a public hearing, if requested by the permittee, that the permittee remains in violation. The regulatory authority shall issue and furnish the permittee a written decision either affirming or rescinding the revocation and stating the reasons therefor.

(b) (1) During the term of the permit the permittee may submit an application, together with a revised reclamation plan, to the regulatory authority for a revision of the permit.

(2) An application for a revision of a permit shall not be approved unless the regulatory authority finds that reclamation as required by this Act and the State or Federal Program can be accomplished under the revised Reclamation Plan. The revision shall be approved or disapproved within a period of time established by the State or Federal Program. The regulatory authority shall establish guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply: *Provided*, That any revisions which propose a substantial change in the intended future use of the land or significant alterations in the Reclamation Plan shall, at a minimum, be subject to notice and hearing requirements.

(3) Any extensions to the area covered by the permit except incidental boundary revisions must be made by application for another permit.

(c) No transfer, assignment or sale of the rights granted under any permit issued pursuant to this Act shall be made without the written approval of the regulatory authority.

SEC. 213. CRITERIA FOR SURFACE MINING AND RECLAMATION OPERATIONS.—(a) Each Reclamation Plan submitted as part of a permit application pursuant to an approved State program or a Federal program under the provisions of this Act shall include, in the degree of detail necessary to demonstrate that reclamation required by the State or Federal Program can be accomplished, a statement of:

(1) the condition of the land to be covered by the permit prior to any mining including:

(A) the uses existing at the time of the application and, if the land has a history of previous mining, the uses which preceded any mining;

(B) the capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, and vegetative cover;

(2) the use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of such use to existing land use policies and plans;

(3) the engineering techniques proposed to be used in mining and reclamation and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; a plan where appropriate for backfilling, soil stabilization, and compacting, grading, and appropriate revegetation (where

vegetation existed immediately prior to mining); an estimate of the cost per acre of the reclamation, including a statement as to how the permittee plans to comply with each of the requirements set out in subsection (b) of this section;

(4) the steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards;

(5) the consideration which has been given to developing the Reclamation Plan in a manner consistent with local, physical, environmental, and climatological conditions and current mining and reclamation technologies;

(6) the consideration which has been given to insuring the maximum practicable recovery of the mineral resource;

(7) a detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(8) the consideration which has been given to making the surface mining and reclamation operations consistent with applicable State and local land use plans and programs;

(9) all lands, interests in lands, or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit: *Provided*, That any information required by this section which is not on public file pursuant to State law shall be held in confidence by the regulatory authority; and

(10) the results of test borings which the applicant has made at the area to be covered by the permit, including the location of subsurface water, and an analysis of the chemical properties including acid forming properties of the mineral and overburden: *Provided*, That information about the mineral shall be withheld by the regulatory authority if the applicant so requests.

(b) Each State Program and each Federal Program shall include regulations which at a minimum require each permittee to—

(1) return all surface areas to a condition which does not present a hazard to public health, safety, or property and is capable of supporting (a) the uses which existed immediately prior to any mining, or if approved by the regulatory authority pursuant to the approval of the permit or any revision thereof, (b) other alternate uses suitable to the locality;

(2) backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials) and grade to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated, unless the operator demonstrates that the overburden is insufficient (giving due consideration to volumetric expansion) to restore the approximate original contour, in which case the backfilling, compacting, and grading required shall be sufficient to cover all acid-forming, saline, and toxic materials, to achieve an angle of repose based upon soil and climate characteristics for the area of land to be affected, and to achieve an environmentally sound condition and a desirable use of the reclaimed area;

(3) stabilize and protect all surface areas affected by the mining and reclamation operations to effectively control erosion and attendant air and water pollution, such stabilization and recla-

mation to include soil compaction, where advisable, and establishment of a stable and self-regenerating vegetative cover (where cover existed prior to mining) which, where advisable, shall be comprised of native vegetation;

(4) segregate and preserve topsoil unless replaced simultaneously as part of the mining operation and use the best available other soil material from the mining cycle to cover spoil material unless the permit applicant provides evidence in the Reclamation Plan sufficient to satisfy the regulatory authority that another method of soil conservation would be at least equally effective for revegetation purposes;

(5) protect offsite areas from slides or damage occurring during the surface mining and reclamation operations, and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area;

(6) insure that when performing surface mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter be placed on the natural downslope below the bench or mining cut, except that soil or spoil material from the initial cut of earth in a new surface mining operation can be placed on a limited and specified area of the downslope below the initial cut if the permittee demonstrates that such soil or spoil material will not slide and that the other requirements of this subsection can still be met;

(7) protect the quality of water and consider the quantity of water in surface and ground water systems both during and after surface mining and reclamation operations by:

(A) avoiding acid mine drainage by (i) preventing or retaining drainage from acid producing deposits, or (ii) treating drainage to acceptable standards of acidity and iron content before releasing it to water courses;

(B) conducting surface mining operations so as to minimize to the extent practicable the adverse effects of water runoff from the disturbed area;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells to prevent acid drainage to ground and surface waters; and

(D) not removing, interrupting, or destroying surface waters during the mining or reclamation process except that surface waters may be relocated where consistent with the operator approved reclamation plan;

(E) such other actions as the regulatory authority may prescribe;

(8) insure the control of surface operations incident to underground mining for the purpose of protecting the surface area, and providing for the proper sealing of shafts, tunnels, and entryways and the filling of exploratory holes no longer necessary for mining, maximizing to the extent practicable return of mine and processing waste, tailings, and any other waste incident to the mining operation, to the mine workings or excavations, and, where such wastes are disposed of in other areas, providing for design and construction of water retention facilities so as to assure (a) that the location will not endanger public health and

safety should failure occur; (b) that construction will be so designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under the Act of August 4, 1954, as amended (16 U.S.C. 1001–09), to assure against failure; (c) that leachate will not pollute surface or ground water; and (d) that final contour of the waste accumulation will be compatible with the surrounding terrain;

(9) insure that all debris, acid forming materials, toxic materials, or materials constituting a fire hazard are treated or disposed of in a manner designed to prevent contamination of ground or surface waters;

(10) insure that explosives are used only in accordance with existing State and Federal law and the regulations promulgated by the regulatory authority;

(11) insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface mining operations; and

(12) meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this Act, taking into consideration the physical, climatological, and other characteristics of the site, and to insure the maximum practicable recovery of the mineral resources.

SEC. 214. INSPECTIONS.—(a) The Secretary shall cause to be made such inspections of any surface mining and reclamation operations as are necessary to evaluate the administration of State Programs, or to develop or enforce any Federal Program, and for such purposes authorized representatives of the Secretary shall have a reasonable right of entry to any surface mining and reclamation operations.

(b) For the purpose of developing or assisting in the development, administration, and enforcement of any State or Federal Program under this Act or in the administration and enforcement of any permit under this Act, or of determining whether any person is in violation of any requirement of this Act—

(1) the regulatory authority shall require each permittee to (A) establish and maintain appropriate records, (B) make reports, (C) install, use, and maintain any necessary monitoring equipment, and (D) provide such other information relative to surface mining and reclamation operations as the regulatory authority deems reasonable and necessary; and

(2) the authorized representatives of the regulatory authority, upon presentation of appropriate credentials (A) shall have a right of entry to, upon or through any surface mining and reclamation operations or any premises in which any records required to be maintained under paragraph (1) of this subsection are located and (B) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method of operation required under this Act.

(c) The inspections by the regulatory authority shall (i) occur on a random basis averaging not less than one inspection per month for the surface mining and reclamation operations covered by each permit; (ii) occur without prior notice to the permittee or his agents or employees and (iii) include the filing of inspection reports adequate to carry out the purposes of this Act. A copy of each inspection report

shall be furnished to the permittee and be available for public review. The permittee or his agents or employees shall be given an opportunitv to accompany the inspector during the inspection.

(d) Permits issued under State Programs or Federal Programs and the permittees' Reclamation Plans shall be filed on public record with appropriate officials in each county or other appropriate subdivision of the State in which surface mining and reclamation operations under such permits will be conducted.

(e) Each permittee shall conspicuously maintain at the entrances to the surface mining and reclamation operations a clearly visible sign which sets forth the name, business address, and phone number of the permittee and the permit number of the permit which covers such operations.

(f) Any records, reports, or information obtained under this section by the regulatory authority which are not within the exceptions of the Freedom of Information Act (5 U.S.C. 552) shall be available to the public.

SEC. 215. FEDERAL ENFORCEMENT.—(a) Whenever, on the basis of any information available to him, the Secretary has reason to believe that any person may be in violation of any requirement of this Act or any permit condition required by this Act, the Secretary shall notify the State regulatory authority in the State in which such alleged violation exists and the State shall proceed under the approved program.

(b) When, on the basis of Federal inspection, the Secretary determines that any person is in violation of any requirement of this Act or any permit condition required by this Act which violation creates a danger to life, health, or property, or would cause significant harm to the environment, the Secretary or his inspectors may immediately order a cessation of surface mining and reclamation operations or the portion thereof causing or contributing to the violation and provide such person a reasonable time to correct the violation. Such person shall be entitled to a hearing concerning such an order of cessation within three days of the issuance of the order. If such person shall fail to obey the order so issued, the Secretary shall immediately institute civil or criminal actions in accordance with this Act.

(c) Whenever the Secretary finds that violations of an approved State Program appear to result from a failure of the State to enforce such State Program effectively, he shall so notify the State. If the Secretary finds that such failure extends beyond the thirtieth day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Secretary that it will enforce such State Program, the Secretary shall enforce any permit condition required under this Act with respect to any person by issuing an order to comply with such permit condition or by bringing a civil or criminal action, or both, pursuant to this section.

(d) Any order issued under this section shall take effect immediately. A copy of any order issued under this section shall be sent to the State regulatory authority in the State in which the violation occurs. Each order shall set forth with reasonable specificity the nature of the violation and the remedial action required, and establish a reasonable time for compliance, taking into account the seriousness of the violation, any irreparable harmful effects upon the environment, and any good

faith efforts to comply with applicable requirements. In any case in which an order or notice under this section is issued to a corporation, a copy of such order shall be issued to appropriate corporate officers.

(e) At the request of the Secretary, the Attorney General may institute a civil action in the district court of the United States for the district in which the affected operation is located for a restraining order or injunction or other appropriate remedy to enforce any order issued pursuant to this section.

(f) (1) If any person shall fail to comply with any Federal program, any provision of this Act, or any permit condition required by this Act, after notice of such failure and expiration of any period allowed for corrective action, such person shall be liable for a civil penalty of not more than $1,000 for each and every day of the continuance of such failure. The Secretary may assess and collect any such penalty.

(2) Any person who knowingly and willfully violates a Federal program, any provision of this Act, or any permit condition required by this Act, or makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act, or who knowingly and willfully falsifies, tampers with, or knowingly and willfully renders inaccurate any monitoring device or method or record required to be maintained under this Act, shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or both.

(g) Wherever a corporation or other entity violates a Federal program, any provisions of this Act, or any permit condition required by this Act, any director, officer, or agent of such corporation or entity who authorized, ordered, or carried out such violation shall be subject to the same fines or imprisonment as provided for under subsection (f) of this section.

(h) The remedies prescribed in this section shall be concurrent and cumulative and the exercise of one does not preclude the exercise of the others. Further, the remedies prescribed in this section shall be in addition to any other remedies afforded by this Act or by any other law or regulation.

Sec. 216. Designation of Land Areas Unsuitable for Surface Mining.—(a) (1) Each State Program or Federal Program shall include a process for review of potential surface mining areas capable of making objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of a State are unsuitable for all or certain types of surface mining operations. This process shall be integrated as closely as possible with existing land use plans and programs. The initial review shall be completed within three years after implementation of the State or Federal Program.

(2) An area may be designated unsuitable for all or certain types of surface mining operations if—

(A) reclamation pursuant to the requirements of this Act is not physically or economically possible;

(B) surface mining operations in a particular area would be incompatible with existing land use plans and programs; or

(C) the area is an area of critical environmental concern.

Provided, however, That no area shall be designated unsuitable for surface mining operations on which surface mining operations are being conducted on the date of enactment of this Act or under a permit issued pursuant to this Act, or as to which firm plans for and substantial legal and financial commitments in such operations are in existence prior to the date of enactment of this Act: *And provided further*, That the designation process shall provide for an appeals process for any interested party as defined by law or regulation concerning the designation of any land as unsuitable for surface mining operations or the termination of such designation when such action is taken other than by Federal or State law.

(3) For purposes of this section the term "area of critical environmental concern" means areas as defined and designated by the State on non-Federal lands where uncontrolled or incompatible development could result in serious damage to the environment, life or property, or the long term public interest which is of more than local significance. Such areas, subject to State definition of their extent, shall include—

(A) "Fragile or historic lands" where uncontrolled or incompatible development could result in irreversible damage to important historic, cultural, scientific, or esthetic values or natural systems which are of more than local significance, such lands to include shorelands of rivers, lakes, and streams; rare or valuable ecosystems and geological formations; significant wildlife habitats; and unique scenic or historic areas;

(B) "Natural hazard lands" where uncontrolled or incompatible development could reasonably endanger life and property, such lands to include flood plains and areas frequently subject to weather disasters, areas of unstable geological, ice, or snow formations, and areas with seismic or volcanic activity;

(C) "Renewable resource lands" where uncontrolled or incompatible development which results in the loss or reduction of continued long-range productivity could endanger future water, food, and fiber requirements of more than local concern, such lands to include watershed lands, aquifiers and aquifer recharge areas, significant agricultural and grazing lands, and forest lands; and

(D) such additional areas as the State determines to be of critical environmental concern.

Provided, however, That if a State land use plan which designates "areas of critical environmental concern" is in effect, the designations in that plan shall be conclusive for the purposes of this section.

(4) Any interested citizen shall have the right to petition the regulatory authority to have an area designated as unsuitable for surface mining operations, or to have such a designation terminated. Whenever such a petition contains allegations of facts with supporting evidence which would tend to establish the allegations, the regulatory authority shall make a written decision on the petition.

(b) The Secretary is authorized and directed to conduct a review of the Federal lands and to determine, pursuant to the criteria set forth in clause (2) and subject to the other provisions of subsection (a) of this section, whether there are areas on Federal lands which are

unsuitable for all or certain types of surface mining operations. When the Secretary determines an area on Federal lands to be unsuitable for all or certain types of surface mining operations, he shall withdraw such area or he may condition any mineral leasing in a manner so as to limit surface mining operations on such area.

(c) No surface mining operation except those which exist on the date of enactment of this Act shall be permitted—

(1) on any lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, and National Recreation Areas designated by Act of Congress;

(2) which will adversely affect any publicly owned park unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park.

SEC. 217. FEDERAL LANDS.—(a) No later than six months after the date of enactment of this Act, the Secretary shall promulgate and implement a Federal Lands Program which shall be applicable to all surface mining and reclamation operations taking place pursuant to any Federal law on any Federal lands: *Provided*, That except as provided in section 403 the provisions of this Act shall not be applicable to Indian lands. The Federal Lands Program shall, at a minimum, incorporate all of the requirements of this Act and shall take into consideration the diverse physical, climatological, and other unique characteristics of the Federal lands in question. Where Federal lands in a State with an approved State Program are involved, the Federal Lands Program shall, at a minimum, include the requirements of the approved State Program.

(b) The requirements of this Act and the Federal Lands Program shall be incorporated by reference or otherwise in any Federal mineral lease, permit, or contract issued by the Secretary which may involve surface mining and reclamation operations. Incorporation of such requirements shall not, however, limit in any way the authority of the Secretary to subsequently issue new regulations, revise the Federal Lands Program to deal with changing conditions or changed technology, and to require any surface mining and reclamation operations to conform with the requirements of this Act and the regulations issued pursuant to this Act.

(c) The Secretary may enter into agreements with a State or with a number of States to provide for a joint Federal-State Program covering a permit or permits for surface mining and reclamation operations on land areas which contain lands within any State and Federal lands which are interspersed or checkerboarded and which should, for conservation and administrative purposes, be regulated as a single management unit. To implement a joint Federal-State program the Secretary may enter into agreements with the States, may delegate authority to the States, or may accept a delegation of authority from the States for the purpose of avoiding duality of administration of a single permit for surface mining and reclamation operations.

(d) Except as specifically provided in subsection (c) this section shall not be construed as authorizing the Secretary to delegate to the States any authority or jurisdiction to regulate or administer surface

mining and reclamation operations or other activities taking place on the Federal lands.

(e) After the date of enactment of this Act, no person shall open or develop any new or previously mined and abandoned site for coal surface mining operations on Federal lands, and no person shall expand by more than 15 per centum existing coal surface mining operations on Federal lands until the Secretary has promulgated and implemented the Federal Lands Program unless such person has first obtained an interim permit issued by the Secretary who may issue such interim permits from the date of enactment of this Act until twenty-two months after such date upon application made by the operator. Such application and permit shall be in accordance with the requirements of this Act.

SEC. 218. PUBLIC AGENCIES, PUBLIC UTILITIES, AND PUBLIC CORPORATIONS.—Any agency, unit or instrumentality of Federal, State, or local government, including any publicly owned utility or publicly owned corporation of Federal, State, or local government, which proposes to engage in surface mining operations which are subject to the requirements of this Act shall comply with the provisions of title II of this Act.

SEC. 219. (a) CITIZEN SUITS.—Except as provided in subsection (b) of this section, any person having an interest which is or may be adversely affected may commence a civil action on his own behalf—

(1) against any person including—

(A) the United States, and

(B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution who is alleged to be in violation of the provisions of this Act or the regulation promulgated thereunder, or order issued by the regulatory authority; or

(2) against the Secretary or the appropriate State regulatory authority where there is alleged a failure of the Secretary or the appropriate State regulatory authority to perform any act or duty under this Act which is not discretionary with the Secretary or with the appropriate State regulatory authority.

(b) No action may be commenced—

(1) under subsection (a) (1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the violation (i) to the Secretary, (ii) to the State in which the violation occurs, and (iii) to any alleged violator of the provisions, regulations, or order, or

(B) if the Secretary or the State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the provisions of this Act or the regulations thereunder, or the order, but in any such action in a court of the United States any person may intervene as a matter of right; or

(2) under subsection (a) (2) of this section prior to sixty days after the plaintiff has given notice of such action to the Secretary, in such manner as the Secretary shall by regulation prescribe, or to the appropriate State regulatory authority, except that such action may be brought immediately after such notification in the

case where the violation or order or lack of order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(c) (1) Any action respecting a violation of this Act or the regulations thereunder may be brought only in the judicial district in which the surface mining operation complained of is located.

(2) In such action under this section, the Secretary, or the State regulatory authority, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under this or any statute or common law to seek enforcement of any of the provisions of this Act and the regulations thereunder, or to seek any other relief (including relief against the Secretary or the appropriate State regulatory authority).

TITLE III—ABANDONED AND UNRECLAIMED MINED AREAS

SEC. 301. ABANDONED MINE RECLAMATION FUND.—(a) There is hereby created in the Treasury of the United States a Fund to be known as the Abandoned Mine Reclamation Fund.

(b) There is authorized to be appropriated to the Fund initially the sum $100,000,000 and such other sums as the Congress may thereafter authorize to be appropriated.

(c) The following other moneys shall be deposited in the Fund—

(1) moneys derived from the sale, lease, or rental of land reclaimed pursuant to this title;

(2) moneys derived from any user charge imposed on or for land reclaimed pursuant to this title, after expenditures for maintenance have been deducted; and

(3) miscellaneous receipts accruing to the Secretary through the administration of this Act which are not otherwise encumbered.

(d) Moneys in the Fund subject to annual appropriation by the Congress, may be expended by the Secretary for the purposes of this title.

SEC. 302. ACQUISITION AND RECLAMATION OF ABANDONED AND UNRECLAIMED MINED AREAS.—(a) The Congress hereby declares that the acquisition of any interest in land or mineral rights in order to construct, operate, or manage reclamation facilities and projects constitutes acquisition for a public use or purpose, notwithstanding that the Secretary plans to hold the interest in land or mineral rights so acquired as an open space or for recreation, or to resell the land following completion of the reclamation facility or project.

(b) The Secretary may acquire by purchase, donation, or otherwise, land or any interest therein which has been affected by surface mining operations prior to the enactment of this Act and has not been returned

to productive or useful purposes. Prior to making any acquisition of land under this section, the Secretary shall make a thorough study with respect to those tracts of land which are available for acquisition under this section and based upon those findings he shall select lands for purchase according to the priorities established in subsection (i). Title to all lands or interests therein acquired shall be taken in the name of the United States, but no deed shall be accepted or purchase price paid until the validity of the title is approved by the Attorney General. The price paid for land under this section shall take into account the unrestored condition of the land.

(c) For the purposes of this title, when the Secretary seeks to acquire an interest in land or mineral rights and cannot negotiate an agreement with the person holding title to such interest or right he shall request the Attorney General to file a condemnation suit and take such interest or right, following a tender of just compensation as awarded by a jury to such person: *Provided, however*, That when the Secretary determines that time is of the essence because of the likelihood of continuing or increasingly harmful effects upon the environment which would substantially increase the cost or magnitude of reclamation or of continuing or increasingnly serious threats to life, safety, or health, or to property, the Secretary may take such interest or rights immediately upon payment by the United States either to such person or into a court of competent jurisdiction of such amount as the Secretary shall estimate to be the fair market value of such interest or rights; except that the Secretary shall also pay to such person any further amount that may be subsequently awarded by a jury, with interest from the date of the taking.

(d) For the purposes of this title, when the Secretary takes action to acquire an interest in land or mineral rights and cannot determine which person or persons hold title to such interest or rights, the Secretary shall request the Attorney General to file a condemnation suit, and give notice and may take such interest or rights immediately upon payment into court of such amount as the Secretary shall estimate to be the fair market value of such interest or rights. If a person or persons establish title to such interest or rights within six years from the time of their taking, the court shall transfer the payment to such person or persons and the Secretary shall pay any further amount that may be agreed to pursuant to negotiations or awarded by a jury subsequent to the time of taking. If no person or persons establish title to the interest or rights within six years from the time of such taking, the payment shall revert to the Secretary and be deposited in the Fund.

(e) States are encouraged to acquire abandoned and unreclaimed mined lands within their boundaries and to donate such lands to the Secretary to be reclaimed under appropriate Federal regulations. The Secretary is authorized to make grants on a matching basis to States in such amounts as he deems appropriate for the purpose of carrying out the provisions of this title but in no event shall any grant exceed 90 per centum of the cost of acquisition of the lands for which the grant is made. When a State has made any such land available to the Federal Government under this title, such State shall have a preference right to purchase such lands after reclamation at fair market value less the State portion of the original acquisition price.

(f) The Secretary shall prepare specifications for the reclamation of lands acquired under this title. In preparing specifications, the Secretary shall utilize the specialized knowledge or experience of any Federal department or agency which can assist him in the development or implementation of the reclamation program required under this title.

(g) The Secretary shall reclaim the lands acquired under this title in accordance with the specifications prepared therefor pursuant to subsection (f) of this section as moneys become available to the Fund.

(h) Administration of all lands reclaimed under this title shall be in the Secretary until disposed of by him as set forth in this title.

(i) In selecting lands to be acquired pursuant to this title and in formulating regulations for the making of grants to the States to acquire lands pursuant to this title, the Secretary shall give priority (1) to lands which, in their unreclaimed state, he deems to have the greatest adverse effect on the environment or constitute the greatest threat to life, health, or safety and (2) to lands which he deems suitable for public recreational use. The Secretary shall direct that the latter lands, once acquired, shall be reclaimed and put to use for recreational purposes. Revenues derived from such lands, once reclaimed and put to recreational use, shall be used first to insure proper maintenance of such lands and facilities thereon, and any remaining moneys shall be deposited in the Fund.

(j) Where land reclaimed pursuant to this title is deemed to be suitable for industrial, commercial, residential, or private recreational development, the Secretary may sell such land pursuant to the provisions of the Surplus Property Act of 1949, as amended.

(k) The Secretary shall hold a public hearing with the appropriate notice, in the county or counties or the appropriate subdivisions of the State in which lands acquired to be reclaimed pursuant to this title are located. The hearing shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use of lands once reclaimed.

SEC. 303. FILLING VOIDS AND SEALING TUNNELS.—(a) The Congress declares that voids and open and abandoned tunnels, shafts, and entryways resulting from mining constitute a hazard to the public health and safety. The Secretary, at the request of the Governor of any State, is authorized to fill such voids and seal such abandoned tunnels, shafts, and entryways which the Secretary determines could endanger life and property or constitute a hazard to the public health and safety.

(b) The Secretary may acquire by purchase, donation, or otherwise such interest in land as he determines necessary to carry out the provisions of this section.

TITLE IV—STUDIES OF SURFACE MINING AND RECLAMATION

SEC. 401. STUDY OF RECLAMATION STANDARDS.—(a) The Chairman of the Council on Environmental Quality is directed to contract with the National Academy of Sciences-National Academy of Engineering, other Government agencies or private groups as appropriate, for an indepth study of current and developing technology for surface min-

ing and reclamation for other minerals and open pit mining designed to assist in the establishment of effective and reasonable regulation of surface and open pit mining and reclamation. The study shall—

(1) assess the degree to which the requirements of this Act can be met by such technology and the costs involved;

(2) identify areas where the requirements of the Act cannot be met by current and developing technology; and

(3) in those instances describe requirements most comparable to those of this Act which could be met, the costs involved, and the differences in reclamation results between these requirements and those of this Act.

(b) The study together with specific legislative recommendations shall be submitted to the President and the Congress no later than eighteen months after the date of enactment of this Act: *Provided*, That, with respect to surface or open pit mining for sand and gravel the study shall be submitted no later than twelve months after the date of enactment of this Act.

(c) There are hereby authorized to be appropriated for the purpose of this section $500,000.

SEC. 402. A STUDY OF MEANS TO MAXIMIZE RESOURCE RECOVERY AND MINIMIZE ENVIRONMENTAL IMPACTS IN MINING FOR COAL AND OTHER MINERALS.—(a) The Chairman of the Council on Environmental Quality is directed to contract with the National Academy of Sciences-National Academy of Engineering, other Government agencies or private groups as appropriate, for an in-depth study of technologies for increasing the availability of coal and other minerals through improved efficiencies in mining, processing, and recycling in order to reduce environmental and land use impacts of resource recovery.

(b) The study shall, at a minimum—

(1) examine improved surface mining and reclamation techniques including the development of new techniques for surface mining, new applications of known techniques, and the differential impacts of these mining techniques when practiced in different climates and terrains, when used to recover different types of minerals and in the context of a range of adjacent and subsequent planned land uses;

(2) examine improved underground mining techniques to increase resource recovery and to minimize surface disturbance, including the application of known techniques to new uses, and the development of new technologies for mining and the disposal of deep mine wastes;

(3) in each instance, describe the duration and reversibility of the anticipated impacts, and discuss ways in which mining and reclamation techniques can be adjusted during and after mining to minimize the impacts described. Possible alternatives to these mining and reclamation techniques, if any, shall also be described;

(4) identify alternative geographic sources and mining technologies for various specific commodities, which make possible resource recovery, with the least environmental impact. The study shall also describe the costs and benefits associated with shifting an industry's supply to such sources or technologies; and

(5) describe the specific measures necessary to fully integrate mining operations and reclamation, both in the short and long

term, with land use management plans and programs on the State and Federal levels.

(c) After studying the technologies and impacts set forth in subsection (b) above, the study shall also examine and research the development of new mining technologies, or other technological means of increasing substantially the efficiency of mining, mineral processing, and other resource recovery practices. This study shall also include the best estimate of the authors as to the earliest date expected for industrial application of each new technique discussed and the net costs and benefits of implementation compared to present practices.

(d) The study shall examine, for major commodity classes, a range of alternatives to primary resource extraction, including the potential for recycling, salvage, reprocessing, byproduct recovery, material substitution, etc., the potential for Federal policy actions to encourage such actions, and the impact such practices would have on the need for primary extraction and the reduction of consequent environmental impacts.

(e) For all of the above, the study will assess the likely impact of altering present mining and reclamation practices on the supply and demand of various commodities, on labor and capital requirements for the various mining industries, and for various classes of producers within those industries.

(f) The study, together with specific recommendations for Federal and State policy needs and for action by the mining and mineral processing industries including recommended reclamation standards shall be submitted to the President and to Congress no later than three years from the date of enactment of this Act. Interim reports shall be submitted at the end of the first and second years.

(g) There are hereby authorized to be appropriated for the purposes of this section, $3,000,000.

Sec. 403. Indian Lands Study.—(a) The Secretary is directed to study the question of the regulation of surface mining on Indian lands which will achieve the purposes of this Act and recognize the special jurisdictional status of these lands.

(b) In carrying out this study the Secretary shall consult with Indian tribes, and may contract with or grant to Indian tribes, qualified institutions, agencies, organizations, and persons.

(c) The study report shall be submitted to the Congress as soon as possible but not later than January 1, 1975.

TITLE V—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

Sec. 501. Definitions.—For the purposes of this Act, the term—

(1) "Secretary" means the Secretary of the Interior;

(2) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam;

(3) "Office" means the Office of Surface Mining, Reclamation, and Enforcement established pursuant to section 202;

(4) "Commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States, or between a State and any other place outside thereof, or between

points in the same State which directly or indirectly affect interstate commerce;

(5) "surface mining operations" means—

(A) activities conducted on the surface of lands in connection with a surface coal mine or surface operations incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect commerce. Such activities include excavation for the purpose of obtaining coal by contour, strip, auger, or other form of mining (but not open pit mining); and the cleaning or processing or preparation (excluding refining and smelting), and loading for interstate commerce of coal at or near the mine site. Such activities do not include (i) the extraction of coal in a liquid or gaseous state by means of wells or pipes unless the process includes in situ distillation or retorting or (ii) the extraction of coal incidental to extraction of other minerals where coal does not exceed 16⅔ per centum of the tonnage of mineral removed; and

(B) the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include land affected by coal exploration operations which substantially disturb the natural land surface, and any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

(6) "surface mining and reclamation operations" means surface mining operations and all activities necessary and incident to the reclamation of such operations after the date of enactment of this Act;

(7) "lands within any State" or "lands within such State" means all lands within a State other than Federal lands and Indian lands;

(8) "Federal lands" means any land owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof, except Indian lands;

(9) "Indian lands" means all lands within the exterior boundaries of any Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands held in trust for or supervised by any Indian tribe;

(10) "Indian tribe" means any Indian tribe, band, group, or community having a governing body recognized by the Secretary;

(11) "State Program" means a program established by a State pursuant to section 204 to regulate surface mining and reclamation operations for coal or for other minerals, whichever is rele-

vant, on lands within such State in accord with the requirements of this Act and regulations issued by the Secretary pursuant to this Act;

(12) "Federal Program" means a program established by the Secretary pursuant to section 205 to regulate surface mining and reclamation operations for coal or for other minerals, whichever is relevant on lands within a State in accordance with the requirements of this Act;

(13) "Federal Lands Program" means a program established by the Secretary pursuant to section 217 to regulate surface mining and reclamation operations on Federal lands;

(14) "Reclamation Plan" means a plan submitted by an applicant for a permit under a State program or Federal program which sets forth a plan for reclamation of the proposed surface mining operations pursuant to section 213;

(15) "State regulatory authority" means the department or agency in each State which has primary responsibility at the State level for administering this Act;

(16) "regulatory authority" means the State regulatory authority where the State is administering this Act under an approved State program or the Secretary where the Secretary is administering this Act under a Federal program;

(17) "person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization;

(18) "permit" means a permit to conduct surface mining and reclamation operations issued by the State regulatory authority pursuant to a State program or by the Secretary pursuant to a Federal program;

(19) "permit applicant" or "applicant" means a person applying for a permit;

(20) "permittee" means a person holding a permit;

(21) "Fund" means the Abandoned Mine Reclamation Fund established pursuant to section 301;

(22) "other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form;

(23) "backfilling to approximate original contour" means that part of the reclamation process achieved by grading from a point at or above the top of the highwall to a point at or below the toe of the spoil bank in which the maximum slope shall not exceed the original average slope from the horizontal by more than five degrees, and no depressions capable of collecting water shall be permitted except where the retention of water is determined by the regulatory authority to be required or desirable for reclamation purposes; and

(24) "Open pit mining" means surface mining in which (1) the amount of material removed is large in proportion to the surface area disturbed; (2) mining continues in the same area proceeding downward with lateral expansion of the pit necessary to maintain slope stability or as necessary to accommodate the

orderly expansion of the total mining operation; (3) the operations take place on the same relatively limited site for an extended period of time; (4) there is no practicable method to reclaim the land in the manner required by this Act; and (5) there is no practicable alternative method of mining the mineral or ore involved.

SEC. 502. ADVISORY COMMITTEES.—(a) The Secretary shall appoint a National Advisory Committee for surface mining and reclamation operations. The Advisory Committee shall consist of not more than seven members and shall have a balanced representation of Federal, State, and local officials, and persons qualified by experience, or affiliation to present the viewpoint of operators of surface mining operations, of consumers, and of conservation and other public interest groups, to advise him in carrying out the provisions of this Act. The Secretary shall designate the chairman of the Advisory Committee.

(b) Members of the Advisory Committee other than employees of Federal, State, and local governments, while performing Advisory Committee business, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including traveltime. While serving away from their homes or regular places of business, members may be paid travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons intermittently employed.

SEC. 503. GRANTS TO THE STATES.—(a) The Secretary is authorized to make annual grants to any State for the purpose of assisting such State in developing, administering, and enforcing State programs under this Act: *Provided*, That such grants shall not exceed 80 per centum of the total costs incurred during the first year; 70 per centum of the total costs incurred during the second and third years; and 60 per centum each year thereafter.

(b) The Secretary is authorized to cooperate with and provide assistance to any State for the purpose of assisting it in the development, administration, and enforcement of its State programs. Such cooperation and assistance shall include—

(1) technical assistance and training, including provision of necessary curricular and instruction materials, in the development, administration, and enforcement of the State programs; and

(2) assistance in preparing and maintaining a continuing inventory of information on surface mining and reclamation operations for each State for the purposes of evaluating the effectiveness of the State programs. Such assistance shall include all Federal departments and agencies making available data relevant to surface mining and reclamation operations and to the development, administration, and enforcement of State programs concerning such operations.

SEC. 504. RESEARCH AND DEMONSTRATION PROJECTS.—(a) The Secretary is authorized to conduct and promote the coordination and acceleration of research, studies, surveys, experiments, and training in carrying out the provisions of this Act. In conducting the activities authorized by this section, the Secretary may enter into contracts with, and make grants to qualified institutions, agencies, organizations, and persons.

(b) The Secretary is authorized to enter into contracts with, and make grants to, the States and their political subdivisions, and other public institutions, agencies, organizations, and persons to carry out demonstration projects involving the reclamation of lands which have been disturbed by surface mining operations. Such demonstration projects may include the use of solid and liquid residues from sewage treatment processes.

(c) There are authorized to be appropriated to the Secretary $5,000,000 annually for the purposes of this section.

SEC. 505. GRANT AUTHORITY FOR OTHER MINERALS.—The Secretary may, when carrying out his responsibilities under sections 502 and 504 of this Act, grant funds and provide assistance to States who presently have a program or are preparing a program which regulates the surface mining of other minerals (including coal) when he determines such State programs effectively control the adverse environmental and social effects of such mining operations.

SEC. 506. ANNUAL REPORT.—The Secretary shall submit annually to the President and the Congress a report concerning activities conducted by him, the Federal Government, and the States pursuant to this Act. Among other matters, the Secretary shall include in such report recommendations for additional administrative or legislative action as he deems necessary and desirable to accomplish the purposes of this Act.

SEC. 507. AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary for administration of this Act and for the purposes of section 503 for the first fiscal year after the enactment of this Act, the sum of $10,000,000 and for each of the next two succeeding fiscal years, the sum of $20,000,000.

SEC. 508. TEMPORARY SUSPENSION.—(a) The President of the United States is hereby authorized to suspend for a period not to exceed ninety days any requirement of this Act concerning surface mining and reclamation operations when he determines it necessary to do so because of (i) a national emergency, (ii) a critical national or regional electrical power shortage, or (iii) a critical national fuels or mineral shortage.

(b) Any action by the President pursuant to subsection (a) shall be based upon findings and recommendations of the Secretary of the Interior, the Chairman of the Council on Environmental Quality, and the Chairman of the Federal Power Commission.

(c) Any action taken by the President pursuant to this section shall be followed by a report to the Congress within five days on the nature of the emergency, the action taken, and any legislative recommendations he may deem necessary.

SEC. 509. OTHER FEDERAL LAWS.—(a) Nothing in this Act shall be construed as superseding, amending, modifying, or repealing the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a), the National Environmental Policy Act of 1969 (42 U.S.C. 4321–47), or existing State or Federal law relating to mine health and safety, and air and water quality including, but not limited to—

"(1) the Federal Metal and Nonmetallic Mine Safety Act (80 Stat. 722; 30 U.S.C. 721–740);

"(2) the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742);

"(3) the Federal Water Pollution Control Act (79 Stat. 903), as amended, the State laws enacted pursuant thereto, or other Federal laws relating to preservation of water quality;

"(4) the Clean Air Act, as amended (79 Stat. 992; 42 U.S.C. 1857); and

"(5) the Solid Waste Disposal Act, as amended (79 Stat. 997; 42 U.S.C. 3251)."

(b) Nothing in this Act shall affect in any way the authority of the Secretary or the heads of other Federal agencies under other provisions of law to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate surface mining and reclamation operations on lands under their jurisdiction.

(c) To the greatest extent practicable each Federal agency shall cooperate with the Secretary and the States in carrying out the provisions of this Act.

(d) Approval of the State programs, pursuant to 204(b), promulgation of Federal programs, pursuant to 205, and implementation of the Federal lands programs, pursuant to 217, shall constitute a major action within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

SEC. 510. STATE LAWS.—(a) No State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, shall be superseded by any provision of this Act or any regulation issued pursuant thereto, except insofar as such State law or regulation is inconsistent with the provisions of this Act.

(b) Any provision of any State law or regulation in effect upon the date of enactment of this Act, or which may become effective thereafter, which provides for more stringent land use and environmental controls and regulations of surface mining and reclamation operations than do the provisions of this Act or any regulation issued pursuant thereto shall not be construed to be inconsistent with this Act. Any provision of any State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, which provides for the control and regulation of surface mining and reclamation operations for which no provision is contained in this Act shall not be construed to be inconsistent with this Act.

SEC. 511. PROTECTION OF THE SURFACE OWNER.—In those instances in which the surface owner is not the owner of the mineral estate proposed to be mined by surface mining operations the applicant for a permit shall include the following:

(a) the written consent of, or a waiver by, the owner or owners of the surface lands involved to enter and commence surface mining operations on such land, or, in lieu thereof,

(b) the execution of a bond or undertaking to the United States or the State, whichever is applicable, for the use and benefit of the surface owner or owners of the land, to secure the payment of any damages to the surface estate, to the crops, or to the tangible improvements of the surface owner as may be determined by the parties involved or as determined and fixed in an action brought against the permittee or upon the bond in a court of competent jurisdiction. This bond is in addition to the performance bond required for reclamation by this Act.

SEC. 512. PREFERENCE FOR PERSONS ADVERSELY AFFECTED BY THE ACT.—(a) In the award of contracts for the reclamation of abondoned and unreclaimed mined areas pursuant to title III and for research and demonstration projects pursuant to section 404 of this Act the Secretary shall develop regulations which will accord a preference to surface mining operators who can demonstrate that their surface mining operations, despite good-faith efforts to comply with the requirements of this Act, have been adversely affected by the regulation of surface mining and reclamation operations pursuant to this Act.

(b) Contracts awarded pursuant to this section shall require the contractor to afford an employment preference to individuals whose employment has been adversely affected by this Act.

SEC. 513. SEVERABILITY.—If any provision of this Act or the applicability thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

I. PURPOSE

The purpose of S. 425, the "Surface Mining Reclamation Act of 1973", is to establish an environmentally strong and administratively realistic program for the regulation of coal surface mining activities and the reclamation of coal mined lands. More specifically, the purposes of S. 425 as reported by the Committee, are to assure that surface coal mining operations—including exploration activities and the surface effects of underground mining—are conducted so as to prevent degradation to the environment, and that such surface coal mining operations are not conducted where reclamation is not feasible according to the terms and conditions of the Act. In addition, S. 425 would protect the rights of persons with a legal interest in land affected by coal surface mining operations.

Federal legislation regulating surface mining—and particularly surface mining for coal—is needed at this time. While a number of States do have surface mining reclamation programs, regulation of surface coal mining is not uniform, and in many instances is inadequate. S. 425 as reported by the Committee would provide minimum Federal standards for coal surface mining and reclamation activities to be administered and enforced by the States, and by the Secretary of the Interior on public lands. S. 425 would provide assistance to the States to improve their regulatory and enforcement programs and authorizes funding to the States for that purpose. In the event that a State fails to comply with the Act, the bill provides for Federal enforcement of the State Program, or for establishment of a Federal Program under the authority of the Secretary of the Interior.

II. NEED

In recent years the coal industry has experienced a significant shift in technology from predominantly underground mining. Although strip mining first started before World War II, it did not become a significant technology for mining coal until the early 1960's when, for the first time, over 30 percent of the country's coal was produced in surface mines. In 1973, over half of the coal produced came from surface mines.

Each week some 1,000 acres of land are disturbed by the surface mining for coal. As of January 1, 1972, there were 4 million acres of land disturbed by surface mining, of which 1.7 million acres (43 percent) were disturbed by surface mining for coal, 1.3 million of these acres in the Eastern coalfields. Only about half these lands have been reclaimed.

Federal legislation is needed now to regulate surface mining and reclamation, because surface mining has become a national issue and its regulation a national priority.

The Committee has been most concerned for some time with the problems associated with coal surface mining. The Committee requested and printed a study on "Coal Surface Mining and Reclamation" (Serial No. 93–8) done by the Council on Environmental Quality. The Committee also conducted a study of its own on "Factors Affecting the Use of Coal in Present and Future Energy Markets" (Serial 93–9). In addition to extensive hearings on the regulation of surface mining, the Committee also held hearings on the CEQ study in April 1973 and on "Coal Policy Issues" in June 1973.

On September 10, 1973—the date the Committee reported this bill—President Nixon in his message to Congress termed passage of such legislation a matter of "highest urgency" explaining further that:

> Our most abundant domestic source of energy is coal. We must learn to use more of it, and we must learn to do so in a manner which does not damage the land we inhabit or the air we breathe.
>
> Surface mining is both the most economical and the most environmentally destructive method of extracting coal. The damage caused by surface mining, however, can be repaired and the land restored. I believe it is the responsibility of the mining industry to undertake such restorative action and I believe it must be required of them.

Coal surface mining activities, in particular, have imposed large social and environmental costs on the public at large in many areas of the country in the form of unreclaimed lands, water pollution, erosion, floods, slope failures, loss of fish and wildlife resources, and a decline in natural beauty. Uncontrolled surface coal mining in many regions has effected a stark, unjustifiable, and intolerable degradation in the quality of life in local communities.

If surface mining and reclamation are not done carefully, significant environmental damage can result. In addition, unreclaimed or improperly reclaimed surface coal mines pose a continuing threat to the environment, and at times are a danger to public health and safety, public or private property. Similar hazards also occur from the surface effects of underground coal mining, including the dumping of coal waste piles, subsidence and mine fires.

Erosion and siltation of streams occur as a result of surface mining. In the Eastern coalfields, where spoil is pushed downslope of mountain mines, landslides, erosion, sedimentation and flooding are common hazards of mountain surface mining. Unstable highwalls are a hazard to life and property. Highwalls that crumble and erode from weathering, ruin drainage patterns and significantly add to water pollution. Material falling off the highwall can retard surface water flow. Ero-

sion increases dramatically when the protective vegetative cover is removed and the soil is not stabilized. Suspended sediment concentration in small Appalachian streams draining strip mined areas can be increased 100 times over that in forest lands. Over 7,000 miles of streams have been affected by surface runoff from coal stripping operations.

In the Western coalfields, many of which are in arid or semi-arid areas, the environmental problems associated with surface mining are somewhat different. Erosion rates on Western range lands are among the highest in the United States for upland areas not under cultivation. The arid climate does not provide sufficient moisture for a protective vegetal cover. Once this fragile vegetative cover has been disturbed by mining, erosion increases dramatically. More important, in areas with little rainfall, restoration of vegetative cover is virtually impossible without irrigation. Furthermore, in most of the Western coalfields the coal beds that lie close to the surface are also aquifers. (For example, the strippable coal seams in the Gillette, Wyo., area serve as an aquifer.) Removal of the coal by surface mining operations would intersect such aquifers that are the source of water for many wells. Flow patterns in such aquifers would be changed and some parts undoubtedly would be dewatered, resulting in reduced availability of water for other uses.

There are also areas which may be totally unsuitable for surface mining such as wilderness areas, areas of historical importance, parks, and wildlife refuges. It may be desirable to prohibit surface mining in such areas, recognizing that it would be incompatible with existing or planned land use patterns. Of course, under the provisions of the Act, no surface mining may take place in an area which cannot be properly reclaimed.

Because mining conditions, climate, and terrain vary so greatly among the different coalfields, administration of a coal surface mining regulation and reclamation program is more properly done by the States. For example, a program geared to insure proper mining and reclamation in the mountains of Appalachia must understandably be different from one suited to regulating these activities in the arid and semi-arid areas of the West. (Similarly, these regional differences must be reflected in Federal standards promulgated for surface mining and reclamation on Federal lands.)

While many States already do have laws regulating surface mining operations for coal and other minerals, in many instances these laws are inadequate, or are not fully enforced. Most existing State laws and Federal regulations for surface mining and reclamation are inadequate in that they are tailored to suit ongoing mining practices, rather than requiring modification of mining practices to meet prior environmental standards. It is the purpose of this Act to effect changes in those mining practices which result in unacceptable or permanent environmental damage, and to eliminate those mining operations which cannot be properly reclaimed.

Regardless of the adequacy of a State's mining and reclamation laws, and assuming good faith on the part of the regulatory agency, problems of enforcing such laws frequently stem from a lack of funding and manpower to adequately insure compliance. As a result, violations of the law and regulations are frequent.

Uniform minimum Federal standards are therefore needed to establish minimum criteria for regulating surface mining and reclamation activities throughout the country, on both public and private lands, and to assure adequate environmental protection from the environmental impacts of surface mining in all States.

In order to assure appropriate local administration of these Federal requirements by the various States, adequate funding and manpower in the State regulatory agencies are essential. For this reason, financial assistance and guidelines are needed for the design and enforcement of State surface mining and reclamation programs in conformance with Federal criteria. It is the purpose of the bill to provide this necessary assistance.

The Committee recognizes that there is an urgent need to balance our growing demand for energy resources with the increasing stress we place on the environment in satisfying that demand.

Coal, the most abundant of our domestic fuel resources, epitomizes in many ways this energy-environment dilemma. By all estimates our physical coal reserves are sufficient to meet our needs, even at greatly increased rates of consumption, for hundreds of years. Yet the contribution of coal has not kept pace with increasing overall energy demands, particularly for electricity generation, and indeed its proportional share of energy supply has been steadily declining.

Now, although coal represents more than three-quarters of our domestic energy resource base, it supplies barely 20 percent of our total energy needs.

The essential requirement for an adequate supply of domestic energy resources to support the Nation's social and economic well-being is being increasingly recognized as a major national issue. It is clear, particularly in the case of coal, that we have ample reserves. We are experiencing short- to mid-term logistical difficulties in fuel production and distribution—a kind of liquidity crisis in energy. In coping with this crisis it is difficult to escape the concluson that coal is a key element. We have an abundance of coal in the ground. Simply stated, the crux of the problem is how to get it out of the ground and use it in environmentally acceptable ways and on an economically competitive basis.

Federal legislation to regulate coal surface mining and reclamation is a crucial measure to insure an adequate energy supply while preserving and maintaining a satisfactory level of environmental quality.

The purpose of this bill is to effect the internalization of mining and reclamation costs, which are now being borne by society in the form of ravaged land, polluted water, and other adverse effects, of coal surface mining. The Committee recognizes that in some instances, compliance with the provisions of this Act may result in increased production costs for some mine operators. The cost of the environmental controls and reclamation requirements provided for under the Act are properly borne by the mine operators, although any resultant increases in mining costs will almost certainly be passed on to coal consumers. While numerous estimates of reclamation costs have been made, no precise figure will be valid for all mines. The range of cost estimates available to the Committee indicates that the cost of complete reclamation (including backfilling to original contour) usually will not exceed 60¢/ton more than the cost of mining with no environmental controls

during mining or any reclamation whatsoever. Since virtually all States now require some measure of environmental protection for mining operations, and some degree of reclamation, incremental costs per ton for surface mining and reclamation under this Act will therefore be somewhat less than 60¢/ton for most mining operations. Further, this cost increase must be reviewed in the proper context.

About 60 percent of all coal is consumed by electric utilities. Using conservative figures of 10,000 Btu/lb. coal and a conversion rate of 10,000 Btu/kwhr the rise of 60¢/ton in the price of coal results in an increase of only 0.03 mils per kwhr of electricity. In addition, the cost of competing fuels is also rising rapidly. Most oil is already more costly than coal on a per Btu basis, and the price of natural gas is expected to rise significantly in the next few years. Accordingly, it does not appear that compliance with the provisions of this Act will adversely affect the competitive position of coal as an energy source, nor that its role as an even greater contributor to domestic energy supply cannot be fulfilled.

This expectation is further reinforced by the fact that strippable coal reserves are a very small percentage both of the Nation's total coal resources, and of the low sulfur coal reserves. Strippable reserves are defined as those reserves under a specified maximum depth of overburden that are economically recoverable with the strip mining technology and equipment presently available or that may be available in the foreseeable future. Economic recovery in strip mining is generally determined by the ratio of overburden to coal, called the stripping ratio. Strippable reserves in many instances can also be recovered by deep mining. Thus, to define reserves as strippable does not mean they can only be recovered by surface mining techniques.

Although surface mining accounts for half of current coal production, most of the Nation's coal resources will have to be deep mined if they are to be exploited. Only 45 billion tons of the total 1,552 billion tons of mapped resources, less than 3 percent can now be classified as strippable reserves. Almost 70 percent of the strippable reserves are in the West, including Alaska. Only 13 percent are in Appalachia.

The total coal resources of the United States amount to more than three trillion tons, divided into several ranks of coal and distributed in several fields. Of these total coal resources, some 50 percent, or 1.5 trillion tons of bituminous coal and lignite, are considered to be recoverable reserves (i.e., minable under current economic conditions and with present technology, or technology that may be available in the foreseeable future.) From a practical standpoint, for the near and medium term, we need only be concerned with recoverable reserves, rather than with resources, since these reserves clearly constitute an ample supply for the foreseeable future.

The principal coal fields of the contiguous United States can be roughly divided into four groups: the anthracite region of eastern Pennsylvania, the Appalachian bituminous fields, the central bituminous fields (Illinois, Indiana, western Kentucky, and Kansas) and the western fields, which contain bituminous and sub-bituminous coal and lignite.

The bulk of our recoverable reserves lie in the western coal fields. Almost half (667,518 million tons) are in Montana, North Dakota,

and Wyoming. About 45 billion tons—mostly in the western and central fields—are considered to be strippable reserves. More than ⅓ of our reserves are low sulfur coal (less than one percent sulfur), concentrated largely in the West (Montana, New Mexico, and Wyoming), with only West Virginia and eastern Kentucky in the East having any sizable low sulfur deposits. Most coal in the central fields (Illinois, West Kentucky, Missouri, and Ohio) is high sulfur coal (more than 2.0 percent). Relatively little high sulfur coal is found in the West, while the central fields have very little low or medium sulfur coal; the Appalachian coals are mixed. About 3% of our low sulfur coal reserves are strippable.

The following table represents a more detailed description of United States coal reserves, by State, sulfur content and method of recovery.

U.S. COAL RESERVES, BY STATE

[Million tons]

	Total coal resources (excluding anthracite) 0–3,000′ overburden, as of Jan. 1, 1967	Reserves by sulfur content (Jan. 1, 1966)				Stripping reserves by sulfur content (Jan. 1, 1969)			
		Recoverable reserves 1971 (assuming 50 percent recovery)	Low (1 percent or less)	Medium (1.1 to 2 percent)	High (2.1 percent or more)	Recoverable strippable reserves Jan. 1, 1968	Low (1 percent or less)	Medium (1.1 to 2 percent)	High (2.1 percent or more)
Alabama	33,538	16,711	2,078	10,625	914	134	33	74	
Alaska	260,089	130,043	92,503			4,411	4,411		
Arizona						387	387		
Arkansas	5,990	2,995	350	1,421	194	174	28	118	28
California						25	25		
Colorado	226,637	113,299	80,645			500	476	24	
Connecticut									
Delaware									
District of Columbia									
Florida									
Georgia	78	39	76						
Hawaii									
Idaho									
Illinois	239,756	119,675	574	7,557	127,758	3,247		80	3,167
Indiana	56,779	28,337	371	8,094	26,577	1,096		293	803
Iowa	20,519	10,257		1,040	6,523	180			180
Kansas	22,686	11,340			19,699	375			375
Kentucky	117,952	58,600	22,132	5,428	38,950	1,785	532	189	1,037
Louisiana									
Maine									
Maryland	1,572	782		125	1,055	21		8	13

Massachusetts									
Michigan	705	352			205	1			1
Minnesota									
Mississippi									
Missouri	23,359	11,670			78,760	1,160			1,160
Montana	378,701	189,347	215,438	4,550	1,166	6,897	6,133	764	
Nebraska									
Nevada									
New Hampshire									
New Jersey									
New Mexico	88,475	44,235	61,421			2,474	2,474		
New York									
North Carolina	130	65	110						
North Dakota	530,680	265,328				2,075	1,678	397	
Ohio	43,864	21,779	611	2,488	38,933	1,033		126	907
Oklahoma	23,299	11,645	1,022	1,193	1,087	111	10	44	57
Oregon	432	216	188						
Pennsylvania	67,553	33,495	1,198	20,048	36,705	752		225	527
Rhode Island									
South Carolina									
South Dakota	3,031	1,515	2,031			160	160		
Tennessee	4,652	2,299	164	975	702	74	5	43	26
Texas	26,926	13,463		6,902	7,978	1,309	625	684	
Utah	80,250	40,107	22,135	1,675	3,998	150	6	136	8
Vermont									
Virginia	12,710	6,217	8,060			258	154	99	5
Washington	36,178	18,089	5,881	1,637	4,122	135	135		
West Virginia	102,034	50,455	41,472	3,511	20,057	2,118	1,138	669	311
Wisconsin									
Wyoming	445,710	222,843	120,715		10	13,971	13,377	65	529
Other States	5,721	2,861	4,705						
Total	2,872,955	1,429,010	1,008,885	140,060	412,035	44,986	31,787	4,038	9,161

III. MAJOR PROVISIONS

1. Coverage of S. 425

S. 425 applies to coal surface mining on Federal and non-Federal lands. This includes all aspects of coal surface mining operations, all surface effects of underground coal mining operations, exploration activities for coal, and the disposal of coal mine and processing wastes.

Regulation of coal surface mining activities is the most pressing national need. Of all land disturbed by all types of surface mining, 43 percent has been disturbed as a result of surface mining for coal. During the last 5 years coal surface mining has accounted for over 50 percent of all surface disturbance.

Open pit mines and surface mining for minerals other than coal are not subject to this bill. Coal surface mining on Indian lands is also excluded. The Committee is fully cognizant of the adverse impacts of these mining operations and intends that these mining operations should be regulated as soon as possible. Of particular concern to the Committee is the need to regulate sand and gravel operations, which account for 25 percent of the acreage disturbed by surface mining, and open pit mining operations. However, in the case of open pit mining and mining for minerals other than coal, the Committee felt that it did not have sufficient information or understanding of the available mining and reclamation technologies for such operations to legislate their regulation in the best possible manner.

In order to assure that appropriate regulations for all surface mining can be developed, appropriate information must be gathered concerning mining operations not now covered by S. 425. The bill therefore provides for two studies to be undertaken by the Council on Environmental Quality in conjunction with the National Academy of Sciences-National Academy of Engineering. The first study covers mining and reclamation technologies for minerals other than coal and for open pit mining. The study report on sand and gravel is due 1 year after enactment. That part of the study dealing with all other minerals is due in 18 months. The second study will examine developing resource recovery and reclamation technologies including recycling to maximize resource recovery with minimal environmental impacts. It is due in 3 years.

In the case of mining operations on Indian lands, the Committee was requested by representatives of a number of affected tribes, to postpone Federal regulation of mining on Indian lands until greater consultation could be sought from the tribes, giving them an opportunity to design mining and reclamation programs for their own lands. The bill therefore also provides for a study by the Secretary of the Interior, to examine the question of applying the provisions of the Act to Indian lands. This study is due no later than January 1, 1975.

As the results of these studies are made available to the Congress, the Committee intends to design appropriate legislation, based on these and other findings, for the regulation of surface mining for all minerals on all lands.

2. State and Federal jurisdiction

Because of the diversity of climate, terrain, mining conditions, and land use patterns in the different areas where coal is mined, the Com-

mittee believes that the States, as the governmental entity closest to the problem, are best able to design and enforce coal surface mining and reclamation programs on non-Federal lands within their jurisdiction.

However, the Federal Government has a responsibility to protect Federal lands from the adverse effects of coal surface mining, and to assure a uniform minimum standard of environmental protection for all persons affected by coal surface mining operations. In the past, the Congress has reconciled similar jurisdictional responsibilities by promulgating Federal standards to be used as a minimum base for State-administered programs, as under the Federal Water Pollution Control Act and the Clean Air Act. This approach largely precludes the possibility of "industrial blackmail," whereby industries threaten to move from one State proposing stringent protection standards, to one with more lenient standards.

Similarly, with respect to coal surface mining and regulation, the Committee has chosen to provide Federal initiative, approval and oversight for a State-administered program. In order to provide assurances that the minimum Federal requirements will be satisfied in all cases, the Committee has provided the Secretary of the Interior with the authority to monitor State enforcement by inspection, and to enforce the requirements of the Act in the event of failure of a State to administer or enforce an approved State program, or any part thereof. Should Federal enforcement of a State program occur, the bill prevents any confusion arising from overlapping or dual Federal-State jurisdictions, by carefully defining the extent of the regulatory power of both the Federal and the State authorities.

The bill facilitates coordination of coal surface mining and reclamation programs on Federal lands with State programs in two ways. First, it requires the program for Federal lands in any State to include at a minimum the requirements of the State's approved program. Second, it provides for limited delegation of authority between the Federal Government and the States, particularly to allow coordinated regulation of mining and reclamation operations on checkerboard lands.

3. Timing of implementation

S. 425 provides that within 6 months after passage of the Act, the Secretary of the Interior shall promulgate final regulations both for the development of State programs to meet the requirements of the Act, and for the regulation of coal surface mining activities on all Federal lands. Within 1 year from such promulgation (18 months after enactment) all States must have submitted to the Secretary for approval a State program for the regulation of coal surface mining and reclamation activities to the requirements of the Act. The Secretary then has 4 months to approve or disapprove the State plans. Twenty-two months after the date of enactment, all States should be administering approved State plans.

From the date of enactment until 22 months after the Act is passed, no new coal surface mining operations may be opened without an interim permit from the appropriate regulatory authority. Similarly, no existing operation can expand so as to affect an area greater than 15 percent of the area affected by its activities in the preceding 12

months, unless an interim permit is obtained from the appropriate regulatory authority. Any surface mines operating under such an interim permit are subject to the full provisions of this Act. Federal inspections of all such operations are authorized in this interim period to determine compliance with the Act's provisions. During this interim period, all other existing operations continue to be regulated by existing regulatory programs. The Committee fully expects, however, that such operations will be conducted in so far as possible to meet the purposes of this Act.

After 22 months from the date of enactment, no person may mine without a permit issued under an approved program, unless an application for a permit has been filed, but not yet acted upon, or unless a State is prevented by injunction from enforcing its State program. This latter exception is limited to 1 year. The Committee anticipates, however, that both mine operators and the States will work expeditiously and in good faith to effect full implementation of the provisions of the Act, and that exceptions will be kept to a minimum.

The Committee also recognizes that it is possible a hiatus might occur between the expiration of the interim 22-month period and the initiation of a State program, which could result in the cessation of coal surface mining operations in certain States. The Committee expects, however, that with due diligence on the part of both Federal and State regulatory agencies, such a hiatus will not occur. The mere existence of the possibility is in itself an incentive for rapid and timely administration of the requirements of the Act.

4. Provisions for reclamation

There is general agreement among all those concerned that surface mining, measured by any criterion, is a drastic environmental change effected by man's technology. Such complete changes in environmental conditions make total restoration of the original ecosystem impossible. Rehabilitation can be accomplished only when planning prior to the actual mining includes the establishment of desirable and attainable objectives for the use of the land after mining. Rehabilitation objectives are achieved through careful management including monitoring of mining and reclamation techniques, reshaping the spoils, prompt revegetation, control of erosion, and prevention of damage to hydrologic systems. The rehabilitation of a specific site will depend on the physical characteristics of the site and the post-mining land use objectives.

The selection of the mining technique is most commonly made on the basis of economics. When rehabilitation is considered part of the mining operation, extraction techniques may well be expected to change to those which most economically facilitate rehabilitation.

Reclamation plans

The Committee believes that submission of a detailed reclamation plan is an essential element of effective regulation.

No surface mining for coal should be permitted on either public or private lands without the prior development of reclamation plans designed to minimize environmental impacts, to meet on- and off-site air and water pollution regulations, and to define a timetable for reclamation concurrent with the mining operation. The preplanning

should be part of an original environmental impact analysis and should clearly indicate the basis on which conditions at the proposed mine site are evaluated. It is important that adequate provision for public participation be a part of the review of the preplans.

Reclamation criteria

The bill reported by the Committee contains reclamation criteria designed to assure that coal surface mining and reclamation operations are conducted so as to prevent adverse short- and long-term environmental impacts and be consistent with State and local land use plans and programs.

Two of the most important of these criteria deal with restoration of surface mined lands to their original contour (213(b)(2)), and the prohibition against dumping of spoil on the down slope when mining on steep slopes (213(b)(6)).

Original contour

This provides that reclamation will include the backfilling, compacting (where necessary) and regrading of all disturbed areas to restore the land to approximate original contour, and eliminate all highwalls, spoil piles, and depressions, except where there is insufficient overburden produced throughout the mining operation to do so.

The Committee believes that this requirement will significantly increase the range of possible post mining land uses for surface mined areas. It will eliminate the long useless ribbons of benches in mountainous areas which may be as much as 200 feet wide and run for miles along mountain sides. In both area and contour mining, the retention of highwalls results in the isolation of land—usually land above the mining operation and not otherwise affected by mining. Such isolated land, surrounded by a highwall of 30 to 200 feet, is preempted from any future land use, and is inaccessible to wildlife as well as to man. In heavily surface mined areas, such isolation has caused severe problems not only by precluding use of the land, but also by denying access in case of fire. There have been instances in which forest fires have burned unchecked because the forest was surrounded by highwalls and could not be reached by firefighters.

The Committee does not intend to preclude such current practices as creation of a reservoir for recreational purposes, or the creation of flat land by "mountain-top" mining. Under the definition of "backfilling to approximate original contour," the regulatory agency has the discretionary authority to permit retention of water for creation of a reservoir or recreation area. "Mountain-top" mining is surface mining on steep slopes in which the entire top of a mountain is removed in a process similar to area mining. This can result in the creation of flat land, which can be used, for example, for airports. Housing developments or industrial parks can also be built on such land if the necessary services (electricity, water, gas, and so forth) can be provided to these more remote areas. Since this mining method does not leave highwalls, no backfilling is needed. Further, in such instances there is usually sufficient overburden to restore the approximate original contour of the mountain top if flat land is not needed for the planned post-mining use of the land.

Recognizing these problems, States which have experienced heavy surface mining have taken steps to eliminate the highwalls. Ohio, Pennsylvania, and West Virginia have legislatively and administratively limited the retention of highwalls. Ohio and Pennsylvania usually require complete backfilling of all highwalls. West Virginia limits the permissible height of highwalls left after mining. However, restricting the height of highwalls, while it does significantly reduce the adverse esthetic impacts of surface mining, does not deal adequately with the problem of isolation. The Committee therefore feels strongly that backfilling to original contour as required in this bill is essential to good reclamation.

This practice is not new to the mining industry. In recent years, the industry trade journals have reported mining operations in West Virginia, Pennsylvania, and Tennessee that have completely eliminated the highwall, using a number of different mining and reclamation techniques. Since the passage of the 1971 West Virginia surface mining law, a number of mining companies in that State have voluntarily adopted the policy of placing no spoil on outslopes, and totally eliminating highwalls.

Although costs vary according to mining technique, many operators who do restore to original contour report that overall costs are not much different from those incurred for lower levels of restoration. In cases where mining techniques were altered to minimize the handling of overburden, total mining costs have been reported to decline.

It has been suggested that in adopting this provision, the Committee is applying nationwide a standard used by the State of Pennsylvania and which, for reasons of geology and terrain, is not applicable beyond that State. There are a number of errors in this assumption.

First, while inclusion of this provision in this bill was supported by the Pennsylvania Department of Environmental Resources and by both Senator Schweiker and Senator Scott of Pennsylvania, the language adopted is not identical to the Pennsylvania law.

Second, although there are some variations in the geology of different coal seams and fields, there are also certain geological constants: sandstone, slate, and shale are found wherever there is coal. This same basic geology of sandstone and slate overburden is common not only to Pennsylvania and West Virginia, but also in the West.

Third, the degree of slope on which a mine is located is immaterial to the feasibility of backfilling to original contour. In West Virginia complete backfilling is required now on all slopes up to 30 degrees. As reported in the trade journals of that State at least two large West Virginia mining companies have adopted a policy of restoring the mined land to approximate original contour *regardless of slope*. Surface mine operators in Pennsylvania have adopted similar policies to meet that State's requirement that all highwalls be backfilled to approximate original contour.

Finally, and most important, implicit in these arguments is the assumption that the requirement of "regrading to approximate original contour" is a requirement to use a particular mining technique widely used in Pennsylvania called the modified block-cut. This is not the case. The Committee is prescribing performance standards to achieve a certain degree of reclamation—the Committee has no intention of

dictating how these standards are achieved. In fact, surface mines in West Virginia and Tennessee are reclaiming to approximate original contour, backfilling all highwalls, *not* using the modified block cut, but retrieving overburden from the spoil pile on the downslope. Obviously, this technique requires more handling of the spoil, and may be more costly than the block-cut technique, but it is being done.

The Committee does not intend to place undue hardship on surface mine operators by this requirement. For this reason they have included a provision that where overburden produced is insufficient, even allowing for volumetric expansion, backfilling to approximate original contour will not be required.

Spoil on downslopes

This standard provides that, when mining on steep slopes, no soil, spoil, debris, or other waste material be placed on the natural downslope below the bench or mining cut, except that the spoil from the initial cut may be placed in a limited and specified area of the downslope if the permittee can demonstrate that it will not slide, and that the other environmental requirements of the bill can still be met.

This provision is crucial to assuring that the environmental impacts of mining are minimized, and confined to the permit area. Most of the damage that occurs as a result of surface mining on steeper slopes, such as landslides, erosion, sedimentation, and flooding results from placing spoil on the downslope. In areas with both steep slopes and significant rainfall, these problems are further aggravated. The least environmental damage usually results when the deposition of overburden on otherwise undisturbed outslopes is minimized.

Recognizing the importance of spoil management to environmental protection, most Appalachian States do restrict spoil placement on the downslope and prohibit fill benches on the steepest slopes (over 30 degrees in West Virginia; over 33 degrees in Maryland; and over 28 degrees in both Kentucky and Tennessee). Most contour surface mining in the Appalachian States occurs on steep slopes between 14 and 33 degrees. West Virginia has recently adopted administrative regulations that require total spoil management. The Committee did not attempt to specify the precise definition of "steep slopes" in terms of degrees. The Committee intends that the Federal regulations promulgated by the Secretary will define the term so as to make this provision applicable to any slope on which spoil cannot be easily controlled.

Under the requirements of S. 425, the only spoil that may be placed on the downslope of the mining operation is that from the initial cut. In adopting this provision, it was the clear understanding of the Committee that this initial cut consisted only of that original excavation made to gain first access to and first expose the coal. In most instances this initial cut should be less than 100 feet along the contour of the slope—enough room simply to install the first set of equipment and remove the first cut of coal. The Committee does not intend or expect that "initial cut" could be construed to mean the entire first contour cut into a seam.

The purpose of the Committee in adopting this measure was to assure that spoil would only be deposited on already mined and disturbed areas, and not on otherwise undisturbed land. The exception al-

lowing for spoil placement from the initial cut in a specified spoil disposal area is a recognition of the fact that at the outset of a new mining operation, there is no undisturbed land except for the access road, which would not likely be suitable for spoil disposal.

It must be understood a mine operator need not necessarily use the downslope for spoil disposition if, for example, the permit area includes flat land which may be used, if approved by the regulatory authority, as a spoil pit for the spoil from the initial cut. Particularly in areas where slides on steep slopes mining operations have been common occurrences, the operator must demonstrate what different practices he will use to prevent such slides and erosion in the new operation.

Other criteria

In addition to the two criteria described above, the Act also requires that the affected land be returned to a nonhazardous and useful condition. Further, all disturbed terrain must be stabilized, protected from erosion and revegetated.

All offsite areas are to be protected from the adverse impacts of the mining operations. No surface waters may be disturbed by mining operations unless their relocation has been previously approved by the regulatory authority; and all such waters must be protected from acid drainage, siltation, and other adverse impacts of water runoff from the areas disturbed by coal surface mining operations. In addition, all shafts, voids, and tunnels from underground coal mines are to be sealed. All waste from underground coal mining and from coal processing operations must be carefully disposed of underground; or, if this is not feasible, in a safe and stable and environmentally acceptable manner compatible with the surrounding terrain. Any disposal of such wastes in contact with surface waters, or use of such wastes as water retention facilities, must be done in compliance with State and Federal water quality requirements, and, so as not to endanger public health and safety, with the requirements for safe impoundment construction set forth under Public Law 566.

5. Prohibition of mining under certain conditions

It is the express intent of the Committee that coal surface mining operations should not be conducted where reclamation (as required by this Act) is not feasible. The mining and reclamation requirements in S. 425 have been designed to accomplish this purpose.

In addition to this general standard, the bill provides a vehicle for designating certain lands unsuitable for mining, under both Federal and State jurisdiction. Under this program States are authorized to designate as unsuitable for mining areas: (1) which economically or technologically cannot be reclaimed according to the requirements of the Act; (2) where coal surface mining would be incompatible with existing land uses, plans, or programs; and (3) which are of critical environmental concern. A similar designation is directed for Federal lands.

This provision does not require that States designate any land at all as unsuitable for mining. It does require each State to review the lands within its boundaries to determine if any should be designated unsuitable. It would allow a State to declare all land within its jurisdiction as unsuitable for surface mining, should it so choose.

The bill does explicitly define certain areas as unsuitable for mining. These include national parks, national wildlife refuges, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, National Recreation areas, and any area which will adversely affect a publicly owned park, unless approved by both the regulatory agency and the agency having jurisdiction over the park.

6. Protection of surface owner rights

When the surface estate and the mineral estate are separate, primacy has frequently been accorded to the rights of the mineral owner over those of the surface owner. But given the adverse nature of the impacts of coal surface mining it is the intent of the Committee that the rights of the surface owner be protected as well. To this end, in cases where the mineral rights are owned separately from the surface rights, the bill provides that no coal surface mining may take place without the express written consent of the surface owner to allow surface mining, unless a bond separate from the reclamation bond has been posted to pay for all damages suffered by the surface owner(s) as a result of the coal surface mining operation. This provision applies to all cases involving separate estates, whether the mineral rights are held by the Federal Government or whether the mineral and the surface rights are both privately owned. It follows the rule used for many years where the Federal Government owns the minerals.

IV. COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs recommends that S. 425, as amended, be approved by the Senate.

V. LEGISLATIVE HISTORY

Surface mining has been the subject of legislation for several years. The first hearings were held by the Committee on Interior and Insular Affairs in the 90th Congress. No bills were reported during the 90th and 91st Congresses. During the 92d Congress, the Subcommittee on Minerals, Materials, and Fuels held 4 days of hearings. The Committee unanimously reported a bill (S. 630) in September 1972 with the understanding that Committee members reserved the option to offer amendments on the Senate floor.

The House of Representatives passed a bill (H.R. 6482) in October 1972. The 92d Congress adjourned before the Senate considered either bill.

The surface mining bills pending before the Committee this year are:

S. 425 (Jackson, Buckley, Mansfield, Metcalf, and Moss); S. 923 (Jackson and Fannin—administration proposal); S. 1163 (Baker); S. 1185 (Case), S. 1612 (Metcalf), S. 946 (Stevenson) which deals with demonstration projects.

The Full Committee held hearings on bills then before it on March 13, 14, 15, and 16. On April 30 the Subcommittee on Minerals, Materials, and Fuels held a hearing on the report prepared by the Council on Environmental Quality entitled "Coal Surface Mining and Re-

clamation—An Environmental and Economic Assessment of Alternatives."

In addition, as part of the study of National Fuels and Energy Policy, the Full Committee and ex-officio members held 3 days of hearings on coal policy issues, which included discussion of the potential impact of Federal surface mining legislation on coal development.

The Committee agreed to mark up S. 425 and met in public mark-up session for 10 days to consider amendments to the bill. On September 10, 1973, the Committee completed action on the bill and ordered S. 425 favorably reported to the Senate with the recommendation that the bill as amended be passed.

VI. SECTION-BY-SECTION ANALYSIS

SECTION 1

This section states the official citation of the Act as the "Surface Mining Reclamation Act of 1973".

TITLE I—STATEMENT ON FINDINGS AND POLICY

SECTION 101. FINDINGS

This section sets out congressional findings relating to surface mining of coal and other minerals. These include the fact that (1) surface mining is only one of various methods of mining; (2) surface mining is a significant activity in our national economy; (3) surface mining has numerous adverse economic environmental and social effects; and (4) surface mining and reclamation technology are developing so that effective and reasonable regulation of surface coal mining is appropriate and necessary to minimize these adverse effects.

These findings conclude that (1) because of the diversity of terrain, climate, biologic, chemical, and other physical conditions, the States should have the primary responsibility for regulating surface mining and reclamation and (2) while there is a need to regulate surface mining operations for minerals other than coal, more data and analyses are needed to provide a basis for effective and reasonable regulation.

SECTION 102. PURPOSES

Section 102 states that the long-term goal of Congress is to prevent the adverse effects to society and the environment resulting from surface mining. It sets out nine specific purposes as steps toward achieving that goal. These recognize that, while all adverse effects of surface mining cannot be prevented immediately and that coal is an essential source of energy, a strong nationwide regulatory program based on minimum Federal standards should be implemented rapidly. This program would assure that coal surface mining operations are not conducted where reclamation which meets these minimum standards is not feasible. The Federal Government would assist the States in developing and implementing such a program. If and when a State manifests a lack of desire or an inability to participate in or implement that program and to meet the requirements of the Act, the Fed-

eral Government is to exercise the full reach of Federal constitutional powers to insure the effectiveness of that program.

Another significant purpose of the Act is to provide a means for development of the data and analyses necessary to establish effective and reasonable regulation of surface mining for all minerals other than coal.

Title II—Existing and Prospective Surface Mining and Reclamation Operations

Section 201. Grant of authority: promulgation of Federal regulations

This section places authority for the administration of the Act with the Secretary of the Interior. The Secretary's initial responsibilities are to prepare and publish within 6 months, regulations concerning coal surface mining and reclamation operations and a detailed description of actions to be taken by a State to develop an acceptable State program to regulate such operations.

This section also provides procedures for publication of the proposed regulations and for public hearings on them.

Subsection 201(c) provides that the Administrative Procedure Act (APA) is to be applicable to the administration of the Act.

Throughout the Act are provisions which insure due process not only for surface mine operators, but also for State and local governments, surface owners, persons with interests which are or may be adversely affected, and local citizens. Due process is insured through numerous reporting and notice provisions, burden of proof provisions, public hearing provisions, and administrative and judicial review provisions. Where the provisions of the Act depart from or are more specific than the APA, the provisions of the Act will prevail.

Section 202. Office of Surface Mining, Reclamation, and Enforcement

To insure administration of the program by an independent agency with neither a resource development (the promotion of mining, marketing, or use of minerals) or resource preservation (pollution control, wilderness, or wildlife management) bias or mission, this section establishes the Office of Reclamation and Enforcement in the Department of the Interior. This Office will be separate from any of the Department's existing bureaus or agencies. It is intended that the Office exercise independent and objective judgment in implementing the Act.

To insure sufficient authority to administer the Act the Office will have a Director to be compensated at the rate provided for in level V of the Executive Pay Schedule. Officers and employees of the Office are to be recruited on the basis of their professional competence and capacity to administer the Act objectively. The Act specifically states that there cannot be transferred to the Office any legal authority which has as its purpose, promoting the development or use of coal or other minerals.

The duties of the Secretary, acting through the Office, include: Administering the various grant-in-aid programs provided in the Act; administering research and development projects provided in the Act; reviewing and approving State programs for surface mining and reclamation operations; developing and administering any Federal program for surface mining and reclamation operations for States which do not have or are not enforcing State Programs; maintaining a Surface Mining and Reclamation Information and Data Center; cooperating with States in dissemination of relevant data and in standardizing methods of collecting and classifying such data; providing technical assistance to the States to enable them to undertake responsibilities provided for in the Act; monitoring all Federal and State research programs dealing with coal extraction; and recommending research projects designed to improve the feasibility of underground coal mining or develop improved surface mining and reclamation techniques.

SECTION 203. SURFACE MINING OPERATIONS NOT SUBJECT TO THIS ACT

This section provides specific exemptions for two types of coal surface mining which would otherwise be subject to the Act.

These are (1) the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him, and (2) the extraction of coal where surface mining affects 2 acres or less.

The Committee felt that these two classes of surface mining cause very little environmental damage and that regulation of them would place a heavy burden on both the miner and the regulatory authority. The exemption for "noncommercial" use does not include coal surface mining done by one unit of an integrated company which uses all of the coal in its own manufacturing plants (e.g., surface mining of metallurgical coal owned by a steel company for use in the company's steel mills, or surface mining for coal owned by an electric utility for use in its own powerplants).

SECTION 204. STATE AUTHORITY; STATE PROGRAMS

Subsection (a) establishes the six prerequisites for any State to continue to obtain financial assistance and to assume full responsibility for all regulation of surface mining and reclamation operations within the State. The State is required to:

(1) Have appropriate legal authority to regulate surface mining and reclamation operations in accordance with the Act's requirements;

(2) Provide sanctions, including civil and criminal sanctions, bond forfeitures, and cease and desist orders for violations of State laws, regulations or permit conditions concerning surface mining and reclamation operations which meet the requirements of the Act;

(3) Have sufficient personnel, interdisciplinary expertise, and financial resources to enable the State to regulate surface mining and reclamation operations in accord with the Act's requirements;

(4) Submit to the Secretary for his approval a State program for the effective implementation and enforcement of a permit system for surface mining and reclamation operations for coal;

(5) Include in its State program a process for coordinating issuance of surface mining permits with any other applicable Federal or State permit process; and

(6) Have established a process for designation of areas as unsuitable for surface mining in accordance with Section 216 and to be conducting a review of potential surface mining areas.

Subsections (b), (c), and (d) set out the time periods and procedures for the Secretary's approval or disapproval of State programs and for revisions and resubmittals of disapproved State programs. Prior to approving a State program, the Secretary is directed to hold a public hearing within the State and solicit the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies with relevant expertise.

Subsection (c) requires the Secretary to approve or disapprove a State program within 4 months after its submission. The Secretary is directed to approve a State program which meets or exceeds the requirements of the Act.

Subsection (d) requires the Secretary, when he disapproves a State program, to notify the affected State and allow the State 60 days to resubmit a revised program. The notification is to be in writing and is to contain the reasons for disapproval. It is intended that the Secretary's notification be very specific. Only with such specificity will a State know how best to revise its State program so it will meet with the Secretary's approval.

Subsection (e) provides that States that are prevented from preparing, submitting, or enforcing a State program because of a court injunction remain eligible for financial assistance under the Act.

This subsection further provides that, despite the provision of Section 205, no Federal program shall be initiated for a State under the circumstances. This bar on imposition of a Federal program ends when the injunction terminates or after 1 year, whichever comes first. The Committee did not want to penalize States which were making a good faith effort to comply with the Act but were prevented from doing so by court action. On the other hand, the Committee does not want to have any undue delay in establishment of a regulatory program which meets the requirements of the Act.

SECTION 205. FEDERAL PROGRAMS

This section provides for Federal regulation of surface mining and reclamation operations in any State which proves unwilling or unable to do the job itself. In accord with the purposes and findings in Title I, Federal regulation is to occur only if a particular State wishes to forego or fails to assume primary responsibility for regulating surface mining operations within its boundaries.

Subsection (a) directs the Secretary to prepare, promulgate, and implement a Federal program covering surface mining and reclamation operations for any State which (a) fails to submit a State program within 12 months of the promulgation of the Federal regulations required by Section 201, (b) fails to resubmit an acceptable revised State program after the Secretary's disapproval of the original submission, or (c) fails to enforce its approved State program.

If an Act of the State legislature is required to enable the State to comply with the Act, the Secretary is authorized to extend the deadline for submission of a State program up to an additional 6 months. All State legislatures will meet no later than 1975, so the 6-month extension should give the State adequate time to adopt acceptable State programs.

Promulgation of a Federal program gives the Secretary *exclusive jurisdiction* for regulation of surface mining operations in the State. Surface mine operators need to know which regulations—Federal or State—they must follow at any given point in time.

In preparing and implementing a Federal program, the Secretary is directed to take into account the affected State's terrain, climate, and other physical conditions.

Subsection (b) requires that a public hearing must be held in the affected State prior to promulgation of the Federal program.

Subsection (c) provides that all permits issued under an approved State program remain valid after implementation of a Federal program. However, the Secretary is directed to undertake a review of such permits and where such permits fail to meet the requirements of the Act, to afford the permittee reasonable time to conform his operations with those requirements or to submit a new permit application.

Subsection (d) provides procedures and timetables for the lifting of the Federal program in any State when a new State program receives the Secretary's approval. It provides that permits issued under the Federal program remain valid under the State program but are subject to review and revision by this State regulatory authority. It further provides that any State laws or regulations regulating surface mining are preempted by the Federal program. This preemption is designed to make it clear to surface mine operators which laws and regulations they must comply with. Other State laws applicable to the operation, such as those relating to air and water quality would not be affected.

Subsection (e) provides that any Federal program shall contain a process for coordinating issuance of permits with any other applicable Federal or State permit process.

The assumption of regulatory authority over surface mining operations in any State by the Secretary through promulgation of a Federal program for that State is regarded as a "last resort" measure. It is certainly preferable that the State regulate such operations through State programs which meet the requirements of the Act. The Committee hopes and expects that the States, in good faith, will develop and implement strong State programs. However, if they fail to do so, the purpose of the Act and this section in particular is to insure that the full reach of the Federal constitutional powers will be exercised to achieve the purposes of the Act.

SECTION 206. SURFACE MINING OPERATIONS PENDING STATE COMPLIANCE

This section establishes an interim surface mining permit program, which would be in effect from enactment of the Act until the deadline for approval of a State program, which is expected to be no later than 22 months after enactment of the Act. (The Secretary has 6 months to

promulgate regulations (Section 201), the States have 12 months after that to submit State programs (205(a)) and the Secretary has 4 months to approve or disapprove the State program (204(c).)

During the 22-month period an interim permit, issued by the appropriate State regulatory authority, would be required to open or develop any new or previously mined and developed site for coal surface mining or to expand by a surface mining operation in existence on the date of enactment of this Act so as to affect an area greater than 15 percent of the area affected by that operation in the preceding 12 months. The interim permit application and the terms of the interim permit would have to meet the requirements of the Act, which are set out in Sections 208, 210, and 213.

As introduced, this section of S. 425 provided a moratorium on new starts, or the reopening of abandoned mines, or the acceleration of existing activities in or for the surface mining of coal until permits for the surface mining and reclamation of coal are obtained under an approved State program. The Committee felt that this was too stringent a step which might lead to shortages of coal, particularly for generation of electricity. At the same time, the Committee did not want to multiply the social and environment costs of surface mining by encouraging new and accelerated operations before the State programs, provided for in the Act, to regulate surface mining and reclamation operations for coal can take effect.

The interim permit program was designed to allow new supplies of coal to be made available pending full implementation of the Act, subject to the reclamation standards and requirements of the Act.

The Committee recognizes that if approved State programs are not in effect at the time when the interim permit program terminates, that there may be a hiatus before a Federal program could be implemented. Such a hiatus would preclude new operations and could shut down existing ones. However, this possibility should serve as an incentive to the States to take the initiative to exercise State responsibility and assure State, rather than Federal, regulation.

It should also serve as an incentive to surface mine operators to support, rather than block, efforts to develop effective State programs which meet the requirements of the Act.

SECTION 207. PERMITS

This section provides a timetable for obtaining permits to conduct surface mining and reclamation operations pursuant to the Act from either the State regulatory authority under a State program or the Secretary under a Federal program. (Hereafter, the words "regulatory authority" will be used to mean the State regulatory authority where the State is administering the Act under State programs or the Secretary where the Secretary is administering the Act under Federal programs.)

Under subsection (a) no person can engage in surface mining without a valid permit under an approved State program or a Federal program beginning 22 months (plus any extension granted under 205 (a)) after the enactment of the Act. There is one exception to this rule. Where there is an approved State program or a Federal program

an operation existing on the date of enactment of the Act may continue without a permit if a permit application has been filed but the initial administrative decision has not been rendered. The Committee did not want to force current operations to shut down simply because of administrative delay. However, the Committee believes that a firm deadline must be established to serve as an incentive to the Secretary, the States and the operators to comply with the Act.

This deadline provides the States with a reasonable period of time after the Secretary promulgates his regulations to prepare their State programs. (Federal regulations for coal are due 6 months after enactment, State programs are due 12 months after that, and the Secretary must approve or disapprove a State program within 4 months after its submission.) The Committee urges the States to develop acceptable programs as rapidly as possible to avoid a hiatus after the deadline. It also expects the Secretary to issue regulations rapidly and actively assist the States to develop acceptable programs.

The exception for operations existing on the date of enactment recognizes that there may be delays in the processing of applications which are not the fault of the applicant and for which he should not be penalized. The applicant would be subject to the requirements of the State or Federal program during this period.

Subsection (b) provides that the term of permits issued under State programs shall not exceed 5 years and shall be for 5 years if issued under a Federal program. The Committee believes that 5 years is a reasonable time period but since many States have 1- or 2-year permits it wishes to allow these to continue. The permit includes the right to successive renewals if the permittee has complied with the State or Federal program. As part of the renewal process the regulatory authority may require new conditions or requirements needed to deal with changing conditions.

In order to avoid the possibility of a permit lapsing because of administrative neglect or delay this subsection provides that if an application for renewal has been timely filed before expiration of the existing permit, but not acted upon, permits are renewed by operation of law unless prior to the expiration of the permit term the regulatory authority finds, after notice and a hearing, that the renewal requirements have not been met. The burden of proof is on the permittee to demonstrate compliance. If the regulatory authority fails to act timely but finds that there is a violation, it can, of course, proceed to revoke the permit pursuant to Section 212 of the Act.

To assure that no one will be locked into outdated reclamation requirements because permits are taken out and renewed without operations being undertaken, subsection (c) provides that permits will terminate if the permittee has not begun operations within 3 years of the issuance of the permit.

SECTION 208. PERMIT APPLICATION REQUIREMENTS: INFORMATION, INSURANCE, AND RECLAMATION PLANS

Section 208 describes the three principal submissions necessary for a complete application for a permit for surface mining and reclamation operations under a State or Federal program or for an interim permit under Section 206: (1) administrative information; (2) a certificate of public liability insurance; and (3) a reclamation plan.

Subsection (a) specifies the minimum administrative information including names and addresses of the applicant and its officers, of any property owners or holders of lease hold interest in the property to be mined, and of owners of all surface areas within 500 feet of the proposed mining and reclamation site; statement of any permits held or bonds posted by the applicant which have been suspended or revoked since 1960; maps and topographical information; the acreage to be affected, watersheds and streams into which drainage will be discharged, climatic factors; and a copy of the applicant's advertisement in the local newspaper (which must appear at least once a week for 4 successive weeks). These requirements insure public notice, particularly to local governments and citizens, and sufficient information to insure a meaningful hearing on the permit application, as required in Section 209.

Subsection (b) requires the applicant to submit either a certificate issued by an insurance company certifying that he has a public liability insurance policy for the proposed surface mining and reclamation operations or appropriate evidence that he has satisfied other State or Federal self-insurance requirements which meet the requirements of the regulations promulgated pursuant to the Act.

This insurance must be maintained in full force and effect during the term of the permit and all renewals until reclamation operations are complete.

The most important submission which an applicant must make is the reclamation plan required by subsection (c). The reclamation plan must establish that reclamation of all affected lands in a manner which will fully meet the detailed requirements set forth in Section 213 can be accomplished.

The elements of the reclamation plan are set out in Section 213(a).

SECTION 209. PERMIT APPLICATION APPROVAL PROCEDURES

This section establishes the procedures for review and approval or disapproval of a permit application under a State or Federal program.

Subsection (a) provides for time limits for initial approval or disapproval of the permit application by the regulatory authority.

It specifies that no permit will be issued until the performance bond required by Section 210 has been filed. It gives the applicant a right to a hearing on the reasons for disapproval, and requires the regulatory authority to issue a written decision if a hearing is held.

Under subsection (b) no permit will be issued unless the regulatory authority finds that (1) all the requirements of this Act and the State or Federal program have been complied with and (2) the applicant has demonstrated that the required reclamation can be accomplished. The Committee believes that the burden of proof is appropriately on the applicant. First, the applicant either already possesses or is in the best position to obtain any and all information necessary to meet the burden of proof. Second, to place the burden of proof upon the regulatory agency would only frustrate the purposes of the Act. Such a step would administratively and financially burden the regulatory authority and could foster either endless delays in processing permit applications or pro forma approval of applicants.

Subsection (c) provides that no operator can obtain a new or revised permit or have an existing permit renewed if the regulatory authority finds that he is failing to comply with any State or Federal program. This additional sanction for noncompliance should encourage compliance by responsible operators and prevent irresponsible ones from starting new operations.

Subsection (d) gives any person having an interest which is or may be adversely affected by a proposed surface mining operation or any Federal, State, or local government agency affected the right to file objections to any permit application. If objections are filed, the regulatory authority must hold a public hearing in the locality of the proposed operation.

Subsection (e) entitles any person adversely affected or aggrieved by the decision of the regulatory authority to judicial review. State courts would review decisions under State programs while Federal courts would review Federal program decisions.

This entire section is designed to insure full public information about and review of applications and to provide due process to all interested parties.

In determining who should have standing to participate in the administrative and judicial review process, the Committee adopted the test established by the Supreme Court in *Sierra Club* v. *Morton*, 405 U.S. 727 (1972).

SECTION 210. PERFORMANCE BONDS

This section sets out the requirements for one of the most important aspects of any program to regulate surface mining and reclamation—the performance bond. The requirements of this section will apply to interim permits as well as State and Federal programs.

Subsection (a) provides that once an application is approved a performance bond must be filed before a permit is issued. The amount of bond must be sufficient to assure completion of the reclamation plan if the work had to be performed by a third party at no expense to the public. The regulatory authority sets the amount of the bond on the basis of at least two independent estimates of these costs.

The bond covers the area to be mined during the initial term of the permit. As additional land is mined the bond is increased.

Subsection (b) requires that bond liability extend for a period of 5 years after completion of reclamation including revegetation or for 10 years in areas where the average annual rainfall is 26 inches or less. This extension is necessary to assure that the bond will be available if revegetation or other reclamation measures fail after initial accomplishment. The longer time period for liability in arid areas recognizes that permanent reclamation, particularly revegetation, is more difficult and uncertain in such areas. This subsection also permits the deposit of cash and negotiable Government bonds or certificates of deposit in lieu of posting a bond. These meet the objectives of the bond, i.e., having a fund available to accomplish reclamation, just as effectively as a bond.

Subsection (c) recognizes that some applicants can satisfy the objectives of the bond requirement through self-insurance or bonding.

Subsection (d) provides that the bond or deposit may be adjusted upward at any time if as a result of experience or changed circumstances, it is determined to be inadequate.

SECTION 211. RELEASE OF PERFORMANCE BONDS OR DEPOSITS

This section establishes the procedures for release of all or part of the performance bond or deposit.

Subsection (a) is designed to assure that there is public notice of the release application by requiring publication of a newspaper advertisement and letters to adjoining property owners, local government bodies, and water and sewer agencies.

Subsection (b) authorizes release of all or part of the bond or deposit if the regulatory authority is satisfied that the required reclamation has been accomplished. No bond can be fully released until all reclamation requirements are met and an authorized representative of the regulatory authority inspects the surface mining and reclamation operations covered by the bond.

Subsection (c) provides for written notice to the permittee of reasons for denial of release and recommended corrective actions.

Subsection (d) provides for a hearing when a request is made by any person having an interest which is or may be adversely affected by the failure of the permittee to have complied with the requirements of the Act or by a governmental body. The hearing must be scheduled in a manner so as not to unduly burden the permittee with continuous hearings when a bond is released in phases, but so as to insure public participation before so much of the bond is released as to make forfeiture of the remainder, rather than full accomplishment of reclamation, inviting. Therefore, the section requires that the hearing be held after 50 percent but before 90 percent of the bond is released.

SECTION 212. REVISION AND REVOCATION OF PERMITS

This section describes procedures and time limits for revision and revocation of permits by the regulatory authority.

Subsection (a) spells out revocation procedures including written notice detailing the reasons for revocation, a reasonable time for the permittee to take corrective action, and a hearing, if requested by the permittee. Violations of permit conditions, the State program, or the Federal Program are sufficient to invoke revocation. Consistent with the "due process" concern throughout the Act, revocation is regarded as a last resort, after cease and desist orders and other procedures have failed.

Subsection (b) provides that the permittee can request a revision of the permit. The regulatory authority is to establish guidelines for the scale or extent of a revision request for which all permit application information and procedural requirements, including notice and hearing, will apply. However, (1) any revisions which propose a substantial change in the intended future use of the land (such as from a residential development to a shopping complex) or significant alterations in the Reclamation Plan (e.g., changes in treatment of surface and ground water) must, at a minimum, be subject to the permit application notice and, hearing requirements, and (2) any extensions to the area covered by the permit, other than incidental boundary revisions (such as additional footage to permit the better siting of an access road), may be accomplished only through application for new permits, not through revision applications.

Revisions will not be approved unless the regulatory authority finds that reclamation required by the Act and the State or Federal program can be accomplished under the revised reclamation plan. This is the same requirement that applies to approval of the original permit.

Subsection (c) provides that no transfer, assignment, or sale of the rights granted under a permit may be made without the written approval of the regulatory authority.

SECTION 213. CRITERIA FOR SURFACE MINING AND RECLAMATION OPERATIONS

Section 213 is the substantive heart of the bill. It contains the criteria which would be required to be met by all surface mining and reclamation operations under a State program (section 204), a Federal program (section 205), the Federal Lands Program (section 217), or the State or Federal interim permit (section 206 and 217). These requirements are set out in two general categories.

Subsection (a) enumerates the information which, as a minimum, would be required to be set forth in any reclamation plan submitted as part of an application for a surface mining permit. Subsection (b) enumerates the minimum requirements which would be required to be placed upon any permittee by regulations promulgated by the regulatory authority. The Committee expects the regulations for this section promulgated by the Secretary and the State regulation authorities will expand on these provisions.

Subsection 213(a). Reclamation plans. There is general agreement that, since careful preplanning is the key to successful reclamation, submission of a reclamation plan prior to issuance of a mining permit is an essential element of effective regulation. This subsection enumerates the minimum items of information required in any reclamation plan submitted by an applicant for a permit to conduct surface mining operations. A reclamation plan is required by subsection 208(c) as part of the permit application. The plan is the basis by which the regulatory authority determines the feasibility and adequacy of reclamation which is proposed to be done by the applicant under the terms of his permit. It also provides that information provided in the reclamation plan be in the degree of detail necessary to demonstrate that reclamation can be accomplished. The burden of proof is on the applicant. The following specific items of information are required.

213(a)(1). A description of the condition of the land area which will be effected by the proposed mining and reclamation must be provided. This description is intended to include general topography, vegetative cover, the cultural development. If the area has been previously mined, the description should cover both the uses of the land existing at the time of the application and those which existed prior to any mining at the site. The description must also include an evaluaton of the capability of the site to support a variety of uses prior to any mining disturbance. This description should give consideration to soil and foundation characteristics, topography, and vegetative cover.

The description is to serve as a benchmark against which the adequacy of reclamation and the degradation resulting from the pro-

posed mining may be measured. It is important that the potential utility which the land had for a variety of uses be the benchmark rather than any single, possibly low value, use which by circumstances may have existed at the time mining began.

213(a)(2). A similar description is also required of the use to which the land affected by the proposed mining is to be put following reclamation and its capacity to support a variety of alternative uses. The relationship of the proposed use to land use policies and plans existing at the time the reclamation plan is filed must also be prescribed. The comparison of this description with that required by 213(a)(1) will provide an evaluation of the net impact which the proposed mining and reclamation will have upon the usefulness of the area affected.

213(a)(3). This section requires a statement of the techniques and equipment which will be used in the mining and reclamation operations. This should be a complete statement adequate to insure that the reclamation proposed to be accomplished is capable of achievement and that each of the requirements set forth in subsection 213(b) and any regulations promulgated pursuant to that subsection can be complied with.

A cost estimate for the reclamation is also required as a basis for review of the adequacy of the performance bond required by section 210.

213(a)(4). The techniques and procedures which will be used by the applicant to insure compliance with all applicable air and water quality laws and regulations, and health and safety standards must be described in sufficient detail to permit an evaluation of their adequacy and probable effectiveness.

213(a)(5). The reclamation plan must set forth a description of the particular considerations which have been given to the conditions found at each site: for example, the effect of precipitation, temperatures, wind, and soil characteristics upon revegetation at the site. Furthermore, there must be a statement of the consideration which has been given to new or alternative reclamation technologies.

It is probable that a number of surface mining and reclamation operations, particularly those in the same general locality, will be similar in terms of general problems and technologies. The purpose of this requirement is to insure that reclamation plans do not become stereotypes and ignore the unique conditions of specific sites.

213(a)(6). There must be a discussion of the potential recovery of the mineral resources of the site to be mined. To the extent that any portion of the resource will not be recovered, the reasons and justification for nonrecovery shall be set forth.

213(a)(7). A detailed time schedule for the completion of the reclamation which is being proposed is to be provided.

213(a)(8). A statement is required demonstrating that the permittee has considered all applicable State and local land use plans and programs.

213(a)(9). A disclosure to the regulatory authority of all rights and interests in lands held by the applicant which are contiguous to the lands covered by the permit application is required. The purpose of this disclosure is to provide the regulatory authority with information on the prospective long-term plans of the applicant in the immediate

vicinity. The bill would not require public disclosure of this information, however, it does not preclude State law from requiring disclosure of part or all of it.

213(a)(10). A disclosure to the regulatory authority of the results of test borings made by the applicant in the area covered by the permit and the results of chemical analyses of the coal or other minerals and overburden is required. This information is essential for the critical evaluation of the adequacy of the reclamation plan by the regulatory authority and the interested public. Because of its proprietory nature, information about the mineral (not the overburden) will be kept confidential if requested by the applicant.

213(b). Reclamation criteria. This subsection sets forth the minimum criteria which must be required by State or Federal programs, the Federal Lands Program, and the interim permit programs regulating surface mining and reclamation operations for coal.

In this subsection and elsewhere in the bill, the Committee has used the term "practicable" to modify certain requirements. It is the intent of the Committee that this term not be considered solely in the context of economic feasibility. Profitability does not determine practicability. Although economics is a consideration in determining practicability, at least equal concerns here are those of technical feasibility and environmental protection.

213(b)(1). The basic criterion for reclamation is to require all surface areas to be returned to a condition at least fully capable of supporting the uses which they were capable of supporting prior to any mining. In other words, the original utility of the site for a variety of purposes is to be maintained or enhanced. There is provision for return of the surface to a condition capable of supporting alternative uses suitable to the locality. This can be done where approved by the regulatory authority pursuant to the permit application approval process.

Section 213(b)(2). This provides that reclamation will include the backfilling, compacting (where necessary) and regrading of all disturbed areas, to restore the land to approximate original contour, and eliminate all highwalls, spoil piles, and depressions, except where there is insufficient overburden produced throughout the mining operation to do so. This provision is crucial to achieving the goal of S. 425, namely, to insure restoration of surface mined land to a condition useful for a range of postmining land uses.

In both area and contour mining, the retention of highwalls results in the isolation of land—usually land above the mining operation and not otherwise affected by mining. Such isolated land, surrounded by a highwall of 30 to 200 feet, is preempted from any future land use, and is inaccessible to wildlife as well as to man. In heavily surface mined areas, such isolation has caused severe problems not only by precluding use of the land, but also by denying access in case of fire. There have been instances in which forest fires have burned unchecked because the forest was surrounded by highwalls and could not be reached by firefighters.

Recognizing these problems, States which have experienced heavy surface mining have taken steps to prevent the isolation of land by mining operations. Ohio, Pennsylvania, and West Virginia have legislatively and administratively limited the retention of highwalls. Ohio

and Pennsylvania usually require complete backfilling of all highwalls. West Virginia limits the permissible height of highwalls left after mining. However, restricting the height of highwalls, while it does significantly reduce the adverse esthetic impacts of surface mining, does not deal adequately with the problem of isolation. The Committee therefore feels strongly that backfilling to original contour as required in this bill is essential to good reclamation.

This practice is not new to the mining industry. In recent years, the industry trade journals have reported mining operations in West Virginia, Pennsylvania, and Tennessee that have completely eliminated the highwall, using a number of different mining and reclamation techniques. Since the passage of the 1971 West Virginia surface mining law, a number of mining companies in that State have voluntarily adopted the policy of placing no spoil on outslopes, and totally eliminating highwalls. Although costs vary according to mining technique, operators who do restore to original contour report that overall costs are not much different from those incurred for lower levels of restoration. In cases where mining techniques were altered to minimize the handling of overburden, total mining costs have been reported to decline.

The Committee believes that this requirement will significantly increase the range of possible post mining land uses for surface mined areas. It will eliminate the long useless ribbons of benches in mountainous areas, which may be as wide as 200 feet and run for miles along mountainsides. In addition, it will not preclude such current practices as creation of a reservoir for recreational purposes, or the creation of flat land by "mountain-top" mining. Under the definition of "backfilling to approximate original contour," the regulatory agency has the discretionary authority to permit retention of water for creation of a reservoir or recreation area. "Mountain-top " mining is surface mining on steep slopes in which the entire top of a mountain is removed in a process similar to area mining. This can result in the creation of flat land, which can be used, for example, for airports. Housing developments or industrial parks can also be built on such land if the necessary services (electricity, water, gas) can be provided to these more remote areas. Since this mining method does not leave highwalls, no backfilling is needed. Further, in such instances there is usually sufficient overburden to restore the original contour of the mountain top, if the planned postmining use of the land does not require flat land.

It has been suggested that in adopting this provision, the Committee is applying nationwide a standard used by the State of Pennsylvania and which, for reasons of geology and terrain, is not applicable beyond that State. There are a number of errors in this assumption. First, while inclusion of this provision in this bill was supported by the Pennsylvania Department of Environmental Resources and by both Senator Schweiker and Senator Scott of Pennsylvania, the language adopted is not identical to the Pennsylvania law. Second, although there are some variations in the geology of different coal seams and fields, there are also certain geological constants: sandstone, slate, and shale are found wherever there is coal. This same basic geology of sandstone and slate overburden is common not only to Pennsylvania and West Virginia, but also in the West.

Third, the degree of slope on which a mine is located is immaterial to the feasibility of backfilling to original contour. Testimony to this effect was presented this summer to the West Virginia Legislature. In West Virginia, complete backfilling is required now on slopes up to 30 degrees. As reported in the trade journals of that State at least two large West Virginia mining companies have adopted a policy of restoring to approximate original contour *regardless of slope*. Surface mine operators in Pennsylvania have adopted similar policies to meet that State's requirement that all highwalls be backfilled to approximate original contour.

Finally, and most important, implicit in these arguments is the assumption that the requirements of "regrading to approximate original contour" is a requirement to use a particular mining technique widely used in Pennsylvania called the modified block-out. This is not the case. The Committee is prescribing performance standards to achieve a certain degree of reclamation—the Committee has no intention of dictating how these standards are achieved. In fact, surface mines in West Virginia and Tennessee are reclaiming to approximate original contour, backfilling all highwalls, not using the modified block cut, but retrieving overburden from the spoil pile on the downslope. Obviously, this technique requires more handling of the spoil, and may be more costly than the block-cut technique, but it is being done.

The Committee does not intend to place undue hardship on surface mine operators by this requirement. For this reason they have included a provision that where overburden is insufficient, even allowing for volumetric expansion, backfilling to approximate original contour will not be required. Expansion of overburden varies somewhat with mining technique and overburden characteristics: in most operations a "swell factor" of 30 to 50 percent can be expected. This means that all mines with a stripping ratio of 3:1 or higher (which covers most mines) will likely be able to backfill to original contour as required by this section. In those instances where overburden is not sufficient for complete restoration of approximate original contour, the highwall must be backfilled and reduced to a stable angle of repose and otherwise reclaimed to an environmentally sound condition. Highwall reduction and access to the land above the highwall in these instances could be greatly facilitated by including in the mining and reclamation plan, plans for angle blasting of the last cut, to achieve a sloping rather than vertical highwall. Such possibilities only serve to emphasize the need for integrated preplanning for all mining and reclamation activities to minimize the environmental impacts of surface mining operations.

213(b)(3). All areas affected by the mining and reclamation operations shall be stabilized by means of compaction where advisable and by means of vegetation which will control erosion both immediately after the reclamation is completed and permanently in the long term. A stable and self-regenerating vegetative cover is to be established where cover existed prior to mining. Whenever possible native vegetation is to be employed.

There are situations (such as heavy clay soils) in which compaction of surface soils may be inadvisable or detrimental to the success of revegetation and should not be required. In some situations non-native species of vegetation may be required to achieve successful revegetation

or they may be preferable to native species for environmentally productive or esthetic reasons, and should be permitted. There may be a need for establishment of vegetation where none existed prior to mining to control erosion.

213(b)(4). The topsoil to be removed from the mined area is required to be segregated and preserved so that it will be available to be used for reclamation purposes. The topsoil need not be stored and replaced on the same area from which it was removed if it is replaced on the top layer of another part of the mined area as part of an ongoing reclamation process.

Other methods of soil conservation are permitted if the regulatory authority determines that another method of soil conservation would be at least equally effective for revegetation.

213(b)(5). Offsite areas must be protected from damages caused by slides which might occur during mining and reclamation operations. Furthermore, all waste accumulations and damages must be contained within the permit area. This provision not only serves to protect landowners not associated with the mining, it also insures that the permit will encompass an area which covers the entire mining activity, including the storage or disposal of spoil and waste. Therefore, the entire activity will be subject to all of the terms of the permit. The Committee intends that permits be limited to the minimum area necessary to accommodate the operation.

Section 213(b)(6). This section provides that, when mining on steep slopes, no soil, spoil, debris, or other waste material be placed on the natural downslope below the bench or mining cut, except that the spoil from the initial cut may be placed in a limited and specified area of the downslope if the permittee can demonstrate that it will not slide, and that the other environmental requirements of the bill can still be met. This is a crucial provision to assuring that the environmental impacts of mining are minimized, and confined to the permit area. Most of the damage that occurs as a result of surface mining on steeper slopes results from placing spoil on the downslope: landslides, erosion, sedimentation, flooding, and so forth. In areas with both steep slopes and significant rainfall, these problems are further aggravated. The least environmental damage usually results when the deposition of overburden on otherwise undisturbed outslopes is minimized.

Recognizing the importance of spoil management to environmental protection, most Appalachian States do restrict spoil placement on the downslope and prohibit fill benches on the steepest slopes (over 30 degress in West Virginia; over 33 degrees in Maryland; and over 28 degrees in both Kentucky and Tennessee). West Virginia has recently adopted administrative regulations that require total spoil management.

Under the requirements of S. 425, the only spoil that may be placed on the downslope of the mining operation is that from the initial cut. In adopting this provision, it was the clear understanding of the Committee that this initial cut consisted only of that original excavation made to gain first access to and first expose the coal. In most instances this initial cut should be less than 100 feet along the contour of the slope: enough room simply to install the first set of equipment and remove the first cut of coal. The Committee does not intend or

expect that "initial cut" could be construed to mean the entire first contour cut into a seam.

The purpose of the Committee in adopting this measure was to assure that spoil would only be deposited on already mined and disturbed areas, and not on otherwise undisturbed land. The exception allowed for spoil placement from the initial cut in a specified spoil disposal area is a recognition of the fact that at the outset of a new mining operation, there is no undisturbed land except for the access road, which would not likely be suitable for spoil disposal.

The downslope site for disposition of the spoil from the initial cut, is to be a limited and specified area: the entire downslope or immediate downslope cannot be considered suitable disposal areas for this spoil. The Committee expects that soil disposal at a specified site will be done in such a manner as to prevent slides and erosion, including compaction and vegetation if necessary.

It must be understood a mine operator need not necessarily use the downslope for spoil disposition if, for example, the permit area includes flat land which may be used, if approved by the regulatory authority, as a spoil pit for the spoil from the initial cut. In fact, the burden of proof rests with an operator to demonstrate why he should be allowed to dispose of any spoil on the downslope. Particularly in areas where slides on steep slope mining operations have been common occurrences, the operator must demonstrate what different practices he will use to prevent such slides and erosion in the new operation.

Wherever this spoil is placed, it must be in such a manner that, should it begin to slide or erode heavily, the spoil material can be removed by the mine operator, and replaced elsewhere.

213(b)(7). The quality of surface and groundwaters in the area is to be protected and the quantity of such waters is to be considered both during and after the term of the mining and reclamation operations. Specifically:

(A). Acid mine drainage must be prevented from entering surface and groundwater sources by preventing the contact of water with acid forming materials, retaining acid waters, or treating acid waters to acceptable standards of acidity and iron content before releasing them to water courses. Whichever means are adopted, the reclamation plan must provide for continuation of the protection after the completion of reclamation for so long as may be required.

(B). During the course of mining and reclamation activities at the site, regulations shall insure that effective practices are observed which will minimize to the extent practicable the adverse effects of water runoff from the disturbed area both during and after mining. It should be noted that this provision recognized the practical impossibility of preventing all silt runoff during earth moving operations. Reclamation standards require, however, that remaining reclaimed surfaces be graded and otherwise protected to prevent further erosion.

(C). Bore holes, shafts, and wells are to be appropriately treated to prevent acid mine waters from draining out of them or into groundwater bodies by means of them.

(D). Surface waters may not be removed, interrupted, or destroyed during mining and reclamation. Surface waters may be relocated if consistent with the reclamation plan.

(E). The regulatory authority may prescribe other practices or methods to protect water quality and quantity.

Section 213(b)(8). The purpose of this paragraph is to regulate the surface operations incident to underground coal mining so as to eliminate the serious adverse impacts they have on both the human and natural environment, including subsidence, air pollution and land disturbance from mine fires, and unsightly and unsafe disposal of mine and processing plant wastes.

This provision requires that mine shafts, tunnels, and entryways be properly sealed, and that exploratory holes be filled. It also requires that all mine and processing waste and tailings be disposed of by stowing or backfilling in the mine excavation to the maximum extent practicable. Where, for some reason, such disposal by back-filling mine voids is not possible, wastes are to be disposed of in a stable and environmentally sound manner, compatible with surrounding terrain, and without polluting surface or ground waters. This section further provides that where processing wastes are used as water impoundments, these impoundments must be located such that a failure would not endanger public health and safety, and be stably constructed in accordance with the standards for construction of impoundment structures issued under Public Law 566.

213(b)(9). The disposal of debris from mining and reclamation operations must be done in a manner which will prevent contamination of surface or ground waters.

213(b)(10). Explosives are to be used in conformance with existing State and Federal law and regulations of the regulatory authority.

213(b)(11). Reclamation efforts are to proceed as contemporaneously as practicable with the mining both to avoid the situation where large unreclaimed areas would be permitted to exist for the duration of adjacent mining operations and to provide experience with the results of reclamation procedures and opportunity for improvements as the work progresses.

213(b)(12). Such other regulations may be promulgated as are found to be necessary to achieve the objectives of the bill, particularly to insure that where surface disturbance is sustained, the maximum practicable recovery of the mineral resource is achieved, with minimal environmental damage.

SECTION 214. INSPECTIONS

This section establishes the minimum information requirements which a permitee must fulfill—either through reporting, monitoring, or affording rights of entry to the regulatory authority's inspectors—once a permit is granted.

Subsection (a) directs the Secretary of the Interior to make whatever inspections are necessary to evaluate the administration of State programs or to develop and enforce any Federal program. The section provides that authorized representatives of the Secretary are to have a reasonable right of entry to permitee's operations. "Reasonable" is to be interpreted so as not to overly burden the permittee but also

provide the inspectors with the best possible opportunities to evaluate the operations in relation to the requirements of the Act.

To insure that the requirements of this Act are met, subsection (b) directs the regulatory authority to require the permittee to keep records, make reports, install and maintain monitoring equipment, and provide other necessary information which will assist the authority to carry out the purposes of the Act. For example, the permittee might be required to report periodically on acres mined; acres reclaimed; deviations, if any, from the reclamation plan, in particular, its time schedule.

This subsection also establishes the right of entry to and inspections of the surface mining and reclamation operations, premises where records are kept, and the records themselves by the regulatory authority.

Subsection (c) provides that the inspections are to occur on a random basis averaging not less than one per month. They must be conducted without prior notice, and need not be during normal working hours. However the operator must be given an opportunity to accompany the inspector. Inspection reports must be filed upon their conclusion. Copies of these reports must be available for public review and to the permittee. The "irregular basis" and "without prior notice" requirements are to insure that the permittee is not capable of making merely "cosmetic" or momentary changes in an operation which otherwise would not meet the requirements of the Act because he has been forewarned of an inspection. Inspections are the heart of any regulatory program and when they become either too "friendly" or too "infrequent" the regulatory program inevitably suffers a loss of effectiveness.

Subsection (d) requires that permits and permittees' reclamation plans must be filed on public record with appropriate officials in each county or other appropriate subdivision of the State in which the operations covered by the permits will be conducted. The purpose of this provision is to insure readily accessible information to concerned citizens and affected local governments so that their participation, as provided for throughout the Act, will be meaningful and effective.

Subsection (e) requires each permittee to conspicuously maintain at the entrances to his operations a clearly visible sign showing his name, business address, and phone number, and his permit number. The purpose of this provision is identical to the one directly above.

SECTION 215. FEDERAL ENFORCEMENT

This section outlines the Federal sanctions under a Federal program or for violations of the Act under a State program.

Subsection (a) provides that if the Secretary has reason to believe that a violation exists in a State with an approved State program he notifies the State regulatory authority. The regulatory authority is directed to take corrective action pursuant to the State program. This carries out the Act's basic concept that the States should be responsible for regulation.

Subsection (b) provides that when a violation which creates a danger to life, health, or property or would cause significant harm to the environment is discovered by Federal inspection the Secretary or his inspectors may issue an immediate cease and desist order. Where such

an order is issued a hearing must be held within 3 days if requested by the alleged violator.

Subsection (c) provides for Federal enforcement when the Secretary determines violations of an approved State program are so widespread as to indicate a failure of the State to enforce its program. Time limits are provided for the State to take corrective action. A public hearing is also required before Federal enforcement would occur. Under Federal enforcement, the Secretary must enforce all permit conditions required under the Act either by issuing an order for compliance or bringing a civil or criminal action. Of course, if the State's unwillingness to enforce its program continues for any length of time, the Secretary is expected to promulgate and implement a Federal program pursuant to Section 205 rather than to enforce those aspects of the State program and those requirements of permits issued under the State program which are required by the Act. In such cases the State would no longer be eligible to receive financial aid under sections 503, 504, and 505 of this Act.

Subsection (d) describes in greater detail the contents of any order issued by the Secretary.

Subsection (e) provides for the institution of civil action for restraining orders, injunctions, or other appropriate remedies, by the Attorney General, at the request of the Secretary of the Interior. All civil actions are to be in the United States district court for the district in which the affected operation is located.

Subsection (f) provides for a civil penalty to be assessed against any person who after notice of failure to comply and the expiration of any period allowed for corrective action, continues to fail to comply with the Act, any Federal program, or any permit condition required by the Act. The penalty must not exceed $1,000 per day. It also provides for a criminal penalty for anyone who knowingly or willfully violates the requirements of the Act, any Federal program, or any permit condition required by the Act, or falsifies or tampers with any records required to be maintained by the Act. The criminal penalty is to consist of a fine of not more than $10,000 or imprisonment for not more than 6 months or both.

Subsection (g) provides for application of this section's penalties when the person in violation is a corporation or other entity.

Subsection (h) states that this section's remedies may be exercised concurrently and are in addition to any other remedies afforded by the Act or any other law or regulation.

SECTION 216. DESIGNATION OF LAND AREAS UNSUITABLE FOR SURFACE MINING

This section sets out the guidelines for one of the required elements of a State or Federal program—the establishment of a process for designation of areas as unsuitable for surface mining. The process is designed to develop the technical data needed to enable the regulatory authority to make objective decisions as to which, if any, land areas of a State are unsuitable for all or certain types of surface mining.

The Committee wishes to emphasize that this section does not require the designation of areas as unsuitable for surface mining. The States could determine that no lands should be so designated. On the

other hand, a State could prohibit all or some forms of surface mining entirely. This section recognizes that surface mining is a very significant use of land which even with stringent reclamation requirements has a severe impact on the resources involved. The fact that a strippable coal deposit exists in a particular tract of land does not mean that strip mining is the most appropriate use of that tract. For this reason, the bill calls for close coordination of the designation process with existing land use plans and programs. ("Existing" refers to those plans and programs in existence at the time the review takes place.) It is the intent of the bill that the review will be a continuing process, and requires that the initial review be completed within 3 years after implementation of the State or Federal program. The designation process also serves to let surface mine operators know in advance whether and under what conditions lands may be surface mined. This gives them a better basis for planning future operations.

Subsection (a)(2) sets out three types of areas that may be designated unsuitable for all or certain types of surface mining. These are (1) areas where reclamation is not physically or economically possible, (2) areas where surface mining would be incompatible with existing land use plans and programs, and (3) areas of critical environmental concern. The definition of "areas of critical environmental concern" is identical to the definition in S. 268—The Land Use Policy and Planning Assistance Act of 1973—as passed by the Senate earlier this year. In order to preclude duplication of effort or inconsistent designations, the bill specifies that if a State land use plan which designates such areas is in effect, the designations in that plan are conclusive for purposes of this Act.

Enactment of the bill would place all coal owners and surface mine operators on notice that there is a possibility that lands may be designated as unsuitable for surface mining.

However, to preclude shutdowns of existing operations, this subsection does provide that no area may be designated unsuitable for surface mining (1) on which surface mining is being conducted on the date of enactment of the Act; (2) where a permit has been issued pursuant to this Act, and (3) or where firm plans and financial commitments for such operations are in existence prior to the enactment of the Act. Mere ownership of the coal resource with the intent to surface mine would not qualify for the exemption from designation as unsuitable for surface mining based on "firm plans for and substantial legal and financial commitments". In order to preclude designation, it must be established that specific plans and specific contracts for sale of coal and purchase of necessary equipment for an actual mining operation were in existence on the date of enactment.

Subsection (a)(2) also provides that the designation process must include an appeals process concerning the designation of areas as unsuitable for mining or the termination of such designations. This provision, together with subsection (a)(4) which provides a right to petition the regulatory authority to have an area designated as unsuitable or to terminate such a designation, assures that both surface mine operators and those wishing to preclude surface mining have an opportunity to present their case for or against designation.

Subsection (b) directs the Secretary of the Interior to review the Federal lands to determine whether areas of Federal lands are un-

suitable for all or any types of surface mining. The Secretary's review is subject to the same criteria and procedures as the review for non-Federal lands. If the Secretary determines that an area of Federal lands is unsuitable for all forms of surface mining, he is directed to withdraw it from coal leasing. If the Secretary determines that certain types of surface mining should not be allowed, he is authorized to condition any mineral leases to so limit surface mining.

Subsection (c) sets out two categories of surface mining operations which will not be permitted unless they were in existence on the date of enactment of the Act. The first category includes all operations on lands within the boundaries of units of national systems established to preserve special values of the lands involved such as the National Park, Wildlife Refuge, and Wilderness Preservation Systems.

The second category includes operations which will adversely affect any publicly owned parks unless approved jointly by the regulatory authority and the agency with jurisdiction over the park. This includes operations involving coal underlying park lands and operations outside the park boundaries which would adversely affect the park. The Committee expects the regulatory authority and the park agency to maintain close coordination to assure proper protection of all parks.

SECTION 217. FEDERAL LANDS

This section requires the Federal Government to "put its own house in order" at the same time that, through this legislation, it requires the States to establish strong regulatory programs.

Subsection (a) requires the Secretary of the Interior to promulgate and implement a Federal Lands Program applicable to all surface mining and reclamation operations taking place pursuant to any Federal law on any Federal lands no later than six months after enactment of the Act. The Federal Lands Program must, at a minimum, incorporate all of the Act's requirements and where the Federal lands are in a State with an approved State program, the requirements imposed by the State. Thus, while the Secretary could, for example, impose more stringent reclamation requirements on Federal lands than were required on non-Federal lands in the State, he could not permit less stringent requirements.

Subsection (b) provides that the requirements of the Act and the Federal Lands Program are to be incorporated in all Federal mineral leases, permits, or contracts issued by the Secretary involving surface mining and reclamation operations.

Subsection (c) provides for joint Federal-State Programs covering permits on land areas which contain State and Federal lands either interspersed or checker-boarded within the scope of a single permit or more than one permit for essentially a single operation and which, for conservation and administrative purposes, should be regulated as single management units. The purpose of this provision is to alleviate a significant problem in Western mining. Where Federal and non-Federal lands are checker-boarded, mining operators could find themselves working under two separate permits, two separate bonds, and two entirely different regulatory systems—Federal and State. The joint Federal-State programs should allow the operator to conduct his operation under a single regulatory system. In order to implement

joint Federal-State programs the Secretary is authorized to enter into agreements with the States, to delegate authority to the States, or to accept a delegation of authority from the States.

Subsection (d) makes it clear that except as provided in subsection (c) the Secretary is not to delegate to the States his primary authority or jurisdiction to regulate or administer mining or other activities on the Federal lands.

Subsection (e) provides that on Federal lands no new surface mines will be started or existing operations expanded by more than 15 percent of the area affected in the previous 12 months until the Secretary has implemented the Federal Lands program or unless the operator obtains an interim permit.

The Committee feels very strongly that stringent reclamation requirements must be developed before any new or expanded coal surface mining operations are permitted on Federal lands. The Committee expects the Secretary to meet the 6-month deadline for implementation of this program established by subsection (a). However, it is possible that unforeseen delays may prevent timely compliance. In order to avoid locking up Federal coal deposits because of these delays, this section authorizes the Secretary to issue interim permits for new and expanded operations for 22 months after enactment of the Act. As is the case with interim permits on non-Federal lands issued under section 206, Federal interim permits must comply with all requirements of the Act, particularly Sections 208, 210 and 213.

SECTION 218. PUBLIC AGENCIES, PUBLIC UTILITIES, AND PUBLIC CORPORATIONS

This section applies the requirements contained in the Act to public corporations, public agencies, and publicly owned utilities, including, for example, the Tennessee Valley Authority, which engage in surface mining.

SECTION 219. CITIZEN SUITS

Section 219 provides for citizen participation in the enforcement of the Act by civil law suits (1) against any person who is alleged to be in violation of the Act or an order of the regulatory authority or (2) against the regulatory authority for alleged failure to perform a nondiscretionary act or duty.

Suits may be brought by "any person having an interest which is or may be adversely affected". The Committee intends that this includes persons who meet the requirements for standing to sue set out by the Supreme Court in *Sierra Club* v. *Morton* (405 U.S. 727 (1972)).

Subsection (b) requires that no action for violation of the law may be started for 60 days after notice of the alleged violation to the alleged violator, the Secretary, and the State in which the violation occurs. If the regulatory authority begins a civil action against the violation, no court action could take place on the citizen's suit. The 60-day waiting period does not apply when the violation or failure to act constitutes an imminent threat to the plaintiff's health or safety or would immediately affect a legal interest of the plaintiff.

Under subsection (c) actions for violations of the law or regulation may be brought only in the judicial district in which the surface mining operation involved is located.

Subsection (d) provides that the court may award costs of litigation to any party and require a bond where a temporary restraining order or preliminary injunction is sought.

This section is not intended to override the specific provisions of Sections 209 and 211 of the bill which provide more precise requirements for citizen participation in the permit application and performance bond release proceedings.

The Committee believes that citizen suits can play an important role in assuring that regulatory agencies and surface operators comply with the requirements of the Act and approved regulatory programs. The possibility of a citizen suit should help to keep program administrators "on their toes."

Title III—Abandoned and Unreclaimed Mined Areas

While Title II deals with existing or future surface mining operations, Title III is addressed to the correction of the worst effects of previous surface mining operations. The increasing national awareness of the need for surface mining regulation has been based upon observation of the past adverse impacts of surface mining. The past surface mining which presents the greatest reclamation problem and to which this Title is directed is that associated with lands which were never adequately reclaimed and are now abandoned.

SECTION 301. ABANDONED MINE RECLAMATION FUND

There is created in Section 301 an "Abandoned Mine Reclamation Fund." The Fund will have an initial appropriations authorization of $100 million. In addition, the Fund will be augmented by moneys derived from the sale, lease, or rental of land reclaimed pursuant to Section 302, from any user charge imposed on or for land reclaimed pursuant to Section 302, and miscellaneous receipts accruing to the Secretary through the administration of the Act which are not otherwise encumbered.

SECTION 302. ACQUISITION AND RECLAMATION OF ABANDONED AND UNRECLAIMED MINED AREAS

This Section authorizes the Secretary to use the moneys of the Fund to reclaim abandoned land which has been subjected to the worst ravages of past surface mining activities or has suffered subsidence from past underground mining activities.

Subsection (a) establishes that acquisition of any interest in land or mineral rights for reclamation purposes is a public use or purpose, even if the Secretary plans to hold the reclaimed land as open space or for recreation or to resell it.

Subsection (b) authorizes the Secretary to acquire abandoned and unreclaimed land or any interest therein by purchase, donation, or otherwise. Prior to making any acquisition, the Secretary is required to make a thorough study of the available tracts. Based upon the study, the Secretary is to select lands for purchase according to the priorities of subsection (i).

Subsections (c) and (d) establish the procedures for condemnation of abandoned and unreclaimed land for land for which title cannot

be established. Immediate taking procedures are authorized when the Secretary determines that time is of the essence because of the likelihood of continuing or increasingly harmful effects upon the environment which would substantially increase the cost or magnitude of reclamation, or of continuing or increasingly serious threats to life, safety, or health or to property.

Subsection (e) encourages the States to acquire abandoned and unreclaimed mined lands and donate those lands to the Secretary to be reclaimed pursuant to this title. The encouragement is in the form of grants to the States not to exceed 90 percent of the cost of acquisition of the lands to be acquired. The States are also to have a preference right to purchase the lands they have donated to the Secretary, once they are reclaimed, at fair market value (less the State's portion of the original acquisition price). The States are invited to participate in Title III for the same reasons they are given the primary regulatory role in the Act. They are more sensitive to local conditions and local needs. Thus, presumably their selection of lands to be acquired would more closely approximate the wishes and priorities of local citizens and governments.

Subsection (f) requires the Secretary, with the assistance of other Federal departments and agencies, to prepare specifications for the reclamation of lands acquired under this title. And subsection (g) requires the Secretary to follow those specifications in reclaiming land with moneys from the fund.

Subsection (h) places administrative responsibility for lands reclaimed under this title with the Secretary until he disposes of the lands.

Subsection (i) establishes the priorities for purchasing and reclaiming abandoned and unreclaimed lands under this title. Priority is to be given (1) to lands which the Secretary believes to have the greatest adverse effect on the environment or constitute the greatest threat to life, health, or safety, and (2) to lands which he finds suitable for public recreational use. The latter lands, once reclaimed, must be put to use for public recreational purposes.

Where reclaimed land is found by the Secretary to be suitable for industrial, commercial, residential or private recreational development, the Secretary is authorized to sell such land pursuant to the provisions of the Surplus Property Act of 1949, as amended.

Subsection (k) requires the Secretary to hold hearings in the areas in which lands acquired to be reclaimed are located. The hearings are to be held at a time which will give local citizens and governments the maximum opportunity to participate in the decision concerning the use of the lands once reclaimed. Subsection (k) is of particular importance in that the Secretary should take great pains to insure that reclamation is accomplished in a manner that is compatible with the wishes of local citizens and governments.

SECTION 303. FILLING VOIDS AND SEALING TUNNELS

This Section authorizes the Secretary to use the Abandoned Mine Reclamation Fund to fill voids in abandoned mines and to seal abandoned tunnels, shafts and entry ways, which create a hazard to public health and safety. The Secretary would not act unless requested by the Governor of the State involved.

Title IV—Studies of Surface Mining and Reclamation

The Committee added this title to S. 425 as a result of information developed during the hearings and revisions made during Committee mark-up of the bill. It provides for three separate studies, each designed to meet a specific need identified by the Committee.

SECTION 401. STUDY OF RECLAMATION STANDARDS

Section 401 is designed to meet short-term needs for information. It directs the Chairman of the Council on Environmental Quality to contract with the National Academy of Sciences—National Academy of Engineering, and such other government agencies or private groups as may be needed, for an indepth study of current and developing technology for surface mining of minerals other than coal and of open pit mining. This study is to be designed to assist in the establishment of effective and reasonable regulation of surface and open pit mining and reclamation.

The Committee's decision to limit the scope of S. 425 to coal surface mining was based on several factors. One of these was that it did not have sufficient information about the nature and characteristics of surface mining for other minerals and about open pit mining.

Surface mining of coal is the most immediate and pressing problem. It accounts for 43 percent of the total land disturbed in the United States by all forms of surface mining. However, the Committee recognizes the need to regulate surface mining for other minerals, particularly sand and gravel which accounts for 25 percent of the total surface area disturbed by surface mining. Thus, subsection 401(b) requires that the study together with specific legislative recommendations shall be submitted to the Congress and the President within 18 months after enactment of the Act. The study and recommendations with respect to surface and open pit mining for sand and gravel is to be submitted within one year.

SECTION 402. A STUDY OF MEANS TO MAXIMIZE RESOURCE RECOVERY AND MINIMIZE ENVIRONMENTAL IMPACTS IN MINING FOR COAL AND OTHER MINERALS

Section 402 is designed to meet longer-range information needs to help maximize resource recovery in and minimize adverse environmental impacts from all mining. It authorizes the Chairman of the Council on Environmental Quality to contract with the National Academy of Sciences-National Academy of Engineering, and such others as may be needed, for an in-depth study of technologies for increasing the availability of coal and other minerals through improved efficiencies in mining, processing, consumption, and recycling in order to reduce environmental and land use impacts.

Subsections (b) through (f) provide that the study will cover all forms of mining for all minerals. It will consider a broad range of alternative methods of mining and reclamation and sources of minerals, including consumption and recycling, and recommend Federal-State policies and industry actions best designed to achieve the purpose of the Act.

The study directed by Section 402 should include the examination of the full range of possible surface and subsurface environmental impacts from all forms of mining and mining practices.

The study and recommendations are to be submitted to Congress and the President within 3 years after enactment of the Act.

Subsection (g) authorizes the appropriation of $3,000,000 for this study.

SECTION 403. INDIAN LANDS STUDY

Section 403 directs the Secretary of the Interior to study the question of regulation of surface mining on Indian lands which will achieve the purposes of the Act and recognize the special jurisdictional status of Indian lands. The Secretary is directed to consult with Indian tribes and to report to Congress as soon as possible but no later than January 1, 1975.

As introduced, S. 425 directed the Secretary of the Interior to regulate surface mining on Indian lands, as well as Federal lands. During its deliberations on the bill, the Committee initially decided to give the Indian tribes the opportunity to develop their own regulatory programs in much the same manner as the States. However, since no Indian testimony was taken during the Committee's hearings, nor did the Department of the Interior address itself to the effect of regulation or how Indian tribal governments could participate, the Committee decided to exempt temporarily all Indian lands from the Act.

The Committee intends to have hearings on this subject as soon as the study report called for by this section has been received. These hearings will give Indians an opportunity to express their views and give their recommendations directly to Congress. In the interim, the Committee expects the Secretary of the Interior to protect the surface values of all Indian lands from the potential ravages of surface mining through his authority to approve all mineral leases and permits. The Committee expects that the Secretary will include terms and conditions in such leases which will meet the criteria set out in this Act.

Title V—Administrative and Miscellaneous Provisions

SECTION 501. DEFINITIONS

This section contains 24 definitions. Of importance to this analysis are "surface mining operations," "Indian lands," "lands within any State," "other minerals," "backfilling to approximate contour," and "open pit mining."

"Surface mining operations" is so defined to include not only traditionally regarded coal surface mining activities but also surface operations incident to underground coal mining, and exploration activities. The effect of this definition is that only coal surface mining is subject to regulation under the Act. Activities included are excavation to obtain coal by contour, strip, augur, dredging, in situ distillation or retorting and leaching or any other form of mining except open pit mining; and the cleaning, or other processing or preparation and loading for interstate commerce of coal at or near the mine site. Activities not included (other than those excluded by Section 203) are

the extraction of coal in a liquid or gaseous state by means of wells or pipes unless the process includes in situ distillation or retorting and the extraction of coal incidental to extraction of other minerals where coal does not exceed 16⅔ percent of the tonnage removed. The last exception is designed to exclude operations, such as limestone quarries, where coal is found but is not the mineral being sought. "Surface mining operations" also includes all areas (1) upon which occur surface mining activities and surface activities incident to underground mining, and (2) coal exploration activities which disturb the natural land surface. It also includes all roads, facilities structures, property, and materials on the surface resulting from or incident to such activities, such as refuse banks, dumps, culm banks, impoundments and processing wastes.

"Indian lands" is defined to mean all lands within the exterior boundaries of Indian reservations, and all lands held in trust for or supervised by any Indian tribe. Coal surface mining on these lands is not subject to regulation under the Act.

"Land within any State" is so defined and used throughout the Act so as to insure that the States, through their State programs, will not assert any additional authority over Federal lands or Indian lands, other than that authority delegated to them by the Secretary in developing joint Federal-State programs pursuant to subsection 217(c).

"Other minerals" is defined to include clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substance of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.

The study required by Section 401 is designed to provide a basis for future legislation to regulate surface mining and reclamation for these minerals.

"Backfilling to approximate original contour" is defined so as to give a five degree leeway from the original average slope and so as to bar depressions capable of collecting water except where retention of water is determined by the regulatory authority to be required or desirable for reclamation purposes.

"Open pit mining" is defined to be surface mining in which (1) the amount of material removed is large in proportion to the surface area disturbed; (2) mining continues in the same area proceeding downward with only that lateral expansion of the pit necessary to maintain slope stability or as necessary to accommodate the orderly expansion of the total mining operation; (3) the operations take place on the same relative limited site for an extended period of time; (4) there is no practicable method to reclaim the land in the manner required by this Act; and (5) there is no practicable alternative method of mining the mineral or ore involved.

All five of these factors have to be present in order to qualify an operation as an open pit mine. The Committee felt that all open pit mining operations should be treated equally regardless of the mineral being mined. The Committee adopted this very narrow definition in order to make it clear that only bona fide open pit mines would qualify for the exemption. The Committee feels that area surface mines involv-

ing thick coal seams such as those found in the western States are not exempt from regulation under this Act.

SECTION 502. ADVISORY COMMITTEES

This section establishes a National Advisory Committee for surface mining and reclamation operations. The Committee will have seven members appointed by the Secretary. The membership should be balanced among Federal, State, and local officials, consumers, and representatives of conservation or other public interest groups.

SECTION 503. GRANTS TO THE STATES

Subsection (a) contains the administrative provisions for the grant program to assist the States to develop, administer and enforce State programs for surface mining and reclamation. The grants are not to exceed 80 percent of the total costs incurred during the first year, 70 percent in the second and third years, and 60 percent each year thereafter.

Subsection (b) directs the Secretary to render training and technical assistance to the States. All Federal agencies are to make relevant data available to the States.

SECTION 504. RESEARCH AND DEMONSTRATION PROJECTS

This section authorizes to be appropriated $5,000,000 annually to the Secretary for purposes of conducting and promoting, through contracts or grants, the coordination and acceleration of research, studies, surveys, experiments, and training in carrying out the purposes of the Act. In addition, the funds can be used to contract with or make grants to States and their subdivisions, other public organizations, and persons to carry out demonstration projects for reclaiming lands which have been disturbed by surface mining operations.

SECTION 505. GRANT AUTHORITY FOR OTHER MINERALS

In recognition of the desirability of regulating surface mining operations for other minerals, this Section authorizes the Secretary to grant funds and provide assistance to States which have or are developing programs for such regulation. Grants or assistance could be provided when the Secretary determined that such State programs effectively control the adverse environmental and social effects of such mining. This provision does not contemplate that the Secretary would force the States to regulate surface mining for other minerals prior to the further Congressional action contemplated by this Act.

SECTION 506. ANNUAL REPORT

The Secretary must report annually to the President and Congress concerning activities conducted by him, the Federal Government, and the States pursuant to the Act, and any recommendations he may have for additional administrative or legislative action.

SECTION 507. AUTHORIZATION OF APPROPRIATIONS

Appropriations for administration of the Act and for Section 503 grants to States is $10,000,000 for the first fiscal year after enactment of the Act; $20,000,000 for the next two succeeding fiscal years.

It is the Committee's intent that Federal funding for operation of State programs will be continued indefinitely. However, since the Act establishes a new program, the Committee believes that a thorough review of the program's effectiveness should be conducted after it has been in operation for 2 or 3 years. This review will be triggered by the need to extend the authorization provision.

SECTION 508. TEMPORARY SUSPENSION

This section authorizes the President to suspend once any of the provisions of the Act under emergency conditions. This includes the authority to suspend *all* the provisions of the Act. The temporary suspension would be for ninety days and could not be extended, and would only be made if suspension of the provisions of the Act would effectively remedy or alleviate emergency conditions. The emergency conditions are a national emergency, a critical national or regional electrical power shortage, or a critical national fuels or mineral shortage.

The President is to make the suspension based upon the findings and recommendations of the Secretary of the Interior, the Chairman of the Council on Environmental Quality, and the Chairman of the Federal Power Commission.

Any suspension must be followed by a report to the Congress within 5 days of the suspension order. Congress will then be in a position to take whatever remedial long-term action appears necessary.

SECTION 509. OTHER FEDERAL LAWS

This section contains the standard savings clauses concerning existing State or Federal mine health and safety, and air and water quality laws, and the mining responsibilities of the Secretary and heads of other Federal agencies for lands under their jurisdiction.

Subsection (d) states that approval of State programs, promulgation of Federal programs, and implementation of the Federal Lands Program are major Federal actions requiring the preparation of an environmental impact statement pursuant to the National Environmental Policy Act. The Committee believes that preparation of a series of at least partially redundant environmental statements would be unnecessary and could delay implementation of the Act. At the same time, the Committee wished to be sure that environmental impact statements are prepared at the critical points of the implementation process.

SECTION 510. STATE LAWS

This section contains the standard savings clauses protecting the States rights to have or develop laws and regulations providing more stringent or different controls of surface mining and reclamation operations.

SECTION 511. PROTECTION OF THE SURFACE OWNER

Where the surface owner is not the owner of the mineral estate Section 511 provides the following protection:

(1) The applicant for a surface mining permit must include in his application the written consent of the surface owner or owners to surface mining; or

(2) The applicant must execute a bond or an undertaking to the United States or the State, whichever is applicable, to secure the payment to the surface owner or owners of any damages to the surface estate, crops, or tangible improvements of the surface owner or owners. This bond is in addition to the performance bond required by the Act.

The Committee understands that the damages for which the surface owner would be compensated would include the loss of the use of the surface from the time mining began until reclamation was completed.

This provision is of special importance in those States where broad form deeds, often signed before the technology of surface mining existed, have been interpreted to give the mineral rights owners complete rights to fully destroy the surface and thus deprive the surface owner of any use of his property. It is based on the rule which has been applied to Federally-owned mineral rights for many years.

SECTION 512. PREFERENCE FOR PERSONS ADVERSELY AFFECTED BY THE ACT

This section requires the Secretary to develop regulations which will accord a preference in the award of contracts for reclamation pursuant to Title III and demonstration projects pursuant to Section 404 to surface mining operators and individuals who have been adversely affected by the operation of the Act. The purpose of this section is to alleviate any social dislocations and costs which occur as a result of the application of the Act. In many sections of the country, surface mining operations are of critical importance to the economic and material well being of local communities. Thus any dampening effect the Act may have on such operations may work hardships on local economies and employment. This provision should mitigate those hardships and also insure that the skills and equipment developed and used in surface mining will not be ignored in or lost to the reclamation efforts.

SECTION 513. SEVERABILITY

This section contains a standard severability clause.

VII. TABULATION OF VOTES CAST IN COMMITTEE

Pursuant to Section 133(b) of the Legislative Reorganization Act of 1946, as amended, the following is a tabulation of votes of the Committee during consideration of S. 425:

1. During the Committee's consideration of the Surface Mining Reclamation Act of 1973 many voice votes and formal roll call votes were taken on amendments to the bill. These votes were taken in open public session and, because they were previously announced by the Committee in accord with the provisions of Section 133(b), it is not necessary that they be tabulated in the Committee Report.

2. S. 425 was ordered favorably reported to the Senate on a roll call vote of 14 yeas and no nays. The vote was as follows:

Jackson—Yea
Bible—Yea
Church—Yea
Metcalf—Yea
Johnston—Yea
Abourezk—Yea
Haskell—Yea
Nelson—Yea
Fannin—Yea
Hansen—Yea
Hatfield—Yea
Buckley—Yea
McClure—Yea
Bartlett—Yea

VIII. COST ESTIMATES PURSUANT TO SECTION 252 OF THE LEGISLATIVE REORGANIZATION ACT OF 1970

In accordance with Section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91–150, 91st Congress) the Committee provides the following estimate of cost.

—For administration of the Act, $10 million in the first year after enactment, and $20 million for each of the next 2 succeeding years.

—For the studies designed to examine various resource recovery and reclamation techniques, $3.5 million in the 3 years following enactment.

—For research and demonstration projects, including the award of contracts and grants to the States for such projects, $5 million annually.

—For reclamation of abandoned and unreclaimed mined lands, $100 million to establish the Abandoned Mine Reclamation Fund.

IX. EXECUTIVE COMMUNICATIONS

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., March 12, 1973.

Hon. Henry M. Jackson,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate,
Washington, D.C.

Dear Mr. Chairman: This is in response to your request for the views of this Department on S. 425, a bill to provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes.

We oppose the enactment of S. 425 and recommend in lieu thereof the enactment of S. 923, the Administration's proposal "To provide for the cooperation between the Federal Government and the States with respect to environmental regulations for mining operations, and for other purposes".

The Administration and this Department actively support the objective of both S. 425 and S. 923 of preventing or substantially reducing the adverse environmental effects of mining operations. These effects have been well-documented, and it is essential that all ongoing and future mining activities be conducted in such a way so as to minimize their adverse environmental impacts.

There are many similarities between the two bills. Both would encourage States to establish a regulatory program which, if it met the statutory criteria and was approved by the Secretary of the Interior, would make the State eligible for Federal grants. Under both bills, if the State fails to develop a regulatory program meeting the standards of the Act, the Secretary of the Interior is directed to enforce a regulatory program within that State. Each bill contains provisions for advisory committees, Federal inspections, penalties, and federally sponsored research and training.

Although there are similarities between S. 425 and the Mined Area Protection Act of 1973 (S. 923), the following represents the major differences which constitute the basis for our recommendation that S. 923 be enacted.

1. Scope

(a) Lands. S. 425 would regulate mining activities on all lands within a State including Federal and Indian lands. Federal and Indian lands are, however, excluded from the provisions of S. 923. These lands are covered by regulations promulgated by the Secretary of the Interior and provide for a high degree of environmental protection. In addition, the Administration's proposed Mineral Leasing Law of 1973 would direct the Secretary of the Interior to administer Federal lands under his jurisdiction in conformance with strict performance standards. In administering these lands, the Secretary cannot, under the provisions of that proposal, be less stringent than the State's regulatory program where the lands are located.

(b) Mining Operations. The Administration's bill covers underground mining as well as surface mines, while S. 425 covers only surface mining and surface operations incidental to an underground mine. The potential environmental hazards of underground mines are serious and, while the technology for dealing with them may not be as advanced as it is with respect to surface mines, it is important that immediate consideration be given to the development and application of improved technology to deal with the environmental problems associated with underground mines. Some of the major problems include underground seepage which pollutes our Nation's waters, mine fires and unintentional subsidence, and it is unclear as to whether S. 425 controls such occurrences.

S. 923 includes all activities associated with the exploration, development or extraction of minerals. S. 425, however, excludes certain activities associated with mineral exploration. The exemption of exploration sampling in which less than 240 tons are removed from one location could result in considerable surface damage or the cumulative effect of numerous sampling operations. In addition, the amount of overburden removed or where it is to be placed in order to obtain such a sample is not mentioned. The Administration's bill would clarify these ambiguities and possible environmental hazards by expressly including all exploration activities within the operative sections of the bill and excluding only prospecting, which is clearly defined in the legislation.

2. Reclamation Requirements

(a) Performance Standards. The Administration's bill provides that State regulations be developed in accordance with minimum Fed-

eral performance standards which will require that environmental considerations be built into the mining operation. It gives the Secretary the responsibility for continually updating performance standards to include the latest technical knowledge and advances in mining and reclamation. The bill sets forth the stringent qualifications which the Secretary must follow in adopting the minimum Federal standards for surface, open pit and underground mining. This approach is preferable to the provisions of S. 425, which direct the States to include minimum reclamation requirements outlined in the bill. These requirements are less specific and less stringent.

(b) Reclamation Timing. It has been the experience of this Department that in order to have effective mined area reclamation it is necessary to conduct the reclamation activities concurrently with the total mining operation. Therefore, S. 923 requires that reclamation be made an integral part of the mining operation and spells out specific requirements as to how this must be done, which the Secretary will elaborate through performance standards. Concurrent reclamation decreases the temporary but potentially significant environmental impacts such as silation and acid mine drainage during the actual mining operation. S. 425 is less explicit as to this important question, merely providing that reclamation efforts be as contemporaneous as possible with the mining operation. This creates the possibility that timely reclamation would not take place, thereby increasing the possibility of interim environmental damages.

3. Funding

(a) Regulatory Programs. Both bills authorize appropriations for Federal grants to develop, administer, and enforce State programs. S. 425 proposes to authorize the Secretary to make annual grants of 80% in the first year, 70% in the second year and 60% for all subsequent years. We believe such a measure would lessen State's incentives to assume full regulatory responsibility for their programs. The Administration's proposal recognizes that such programs should not continue to be federally funded but should become self-sustaining. Consequently, grants under S. 923 to cover 80% of the costs of developing State regulations a year prior to Secretarial approval and 60%, 45%, 30%, and 15% for the next four years respectively, and then terminating after the fifth year is the better approach.

(b) Designation of Land Unsuitable for Mining. The Administration's bill requires that the State regulatory program include the identification of lands which are unsuitable for mining because they could not be adequately reclaimed under present technology. S. 425 does not make this identification a mandatory part of the program, however, it provides Federal funds to encourage States to implement such a program.

(c) Open Ended Authorization. The Administration's proposal authorizes the appropriation of such sums as are necessary to carry out all provisions of the bill. This allows maximum flexibility to meet the needs as they develop and to assist the States in the implementation of effective programs. S. 425, however, authorizes specific maximum amounts in four categories: State programs, designation of unsuitable lands, research and slope limitation study.

4. Federal-State Relationship

Both bills recognize that the responsibility for developing and enforcing regulations should rest with the States. The time limitations in S. 425, however, are inadequate to allow the States to develop effective environmental programs. The 12-month time limit for submission of State programs after promulgation of Federal regulations is insufficient for some States to enact new legislation and establish the procedures necessary to ensure that such laws will be effectively administered. This is especially true for those States that do not have such laws in effect and for those States whose legislatures meet biennially.

The Administration's proposal provides a more realistic time allowance for voluntary State compliance. Each State would be given up to two years after the date of enactment to submit an acceptable regulatory program.

5. Moratorium on Surface Coal Mining Operations

S. 425 contains a provision which prohibits any operator from (1) opening or developing a new or previously mined coal operation, or (2) significantly increasing existing coal operations with a provision that the Secretary may, in certain instances, waive the moratorium. The imposition of a moratorium on surface coal mining, which could last for 18 months, could adversely impact the Nation's energy supply situation. Such a scheme outlined in S. 425 could inhibit planning for and the development of new mines whose output will be needed if we are to avert a critical energy shortage.

6. Restoration of Past Mining Damage

S. 425 proposes to establish a strip mining reclamation fund with an appropriation of $100 million to finance the acquisition and restoration of lands damaged by past mining activities. While we agree that such "orphan lands" are a serious problem, the costs of corrective programs are extremely high. Typically there is no legal remedy to require the party causing the damage to repaid it. We believe that the use of scarce Federal tax dollars to support these high cost corrective programs cannot be justified on a priority basis. The Administration's bill is based on the conviction that the first priority in mined area protection must be to arrest ongoing damage presently being inflicted on the land and that all available Federal funds should be devoted to accomplishing this objective.

However, S. 923 does indirectly address itself to the problem of past damaged lands. A large percentage of previously mined areas contain mineral deposits which become commercially valuable as technology advances. The reworking of these areas affords the opportunity for the reclamation of the entire area. S. 923 requires the States, as a part of the State program, to adopt regulations which will encourage the reworking of past mined areas and provide for the reclamation of the entire area. This program will not require Federal expenditures and should result in significant rehabilitation of past damaged lands. We think this concept holds considerable promise, for example, in Appalachia a large percentage of the coal to be strip mined during the next decade will be taken from reworked areas.

As we have stated, both bills have numerous similarities in developing a system to regulate mining in order to restore the mined lands to an optimum condition. We believe that S. 923, for the reasons stated,

will best promote the restoration of mined lands without jeopardizing the country's ability to develop its mineral resources to meet the energy demands. We therefore believe that your Committee should act favorably upon S. 923.

The Office of Management and Budget has advised that there is no objection to the presentation of this report and that enactment of S. 923 would be in accord with the Administration's program.

Sincerely yours,

JOHN C. WHITAKER,
Acting Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., February 15, 1973.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is enclosed a draft bill "To provide for the cooperation between the Federal government and the States with respect to environmental regulations for mining operations, and for other purposes".

We recommend that this bill, a part of the environmental program announced February 15, 1973, by the President in his Environment and Natural Resources State of the Union Message, be referred to the appropriate committee for consideration and that it be enacted.

These adverse environmental effects that can result from mining operations have been a subject of growing national concern in recent years. The ever increasing demand for minerals, coupled with dramatic developments in our ability to recover them has led to an increase in mining activity. These activities will continue to be an important part of the American economy.

Mining operations, however, also pose a serious threat to the environment. In varying degrees State legislatures and mining companies have responded to the problem, but this effort suffers from lack of uniformity and unanimity.

The proposed bill would require that all ongoing and future mining activities be conducted in a way as to minimize their adverse environmental effects. The legislation provides for the development of State regulations based on minimum Federal performance standards which will require environmental consideration to be built into the mining operation.

The Administration's bill recognizes that the responsibility for developing and enforcing regulations rests with the States, while also recognizing that the effort must be nationwide with minimum standards enforced to protect the environment, and to the extent possible, place industry on an equal level in every State. The bill gives the States the opportunity to develop and submit regulations, in accordance with specific minimum performance standards, for approval by the Secretary of the Interior. If the State fails to develop an acceptable program within two years after enactment or if the State fails to enforce effectively its approved program at any time, the

bill authorizes the Secretary to administer and enforce a mining and reclamation program within the State.

This legislation is long overdue. The longer it is put off, the larger the ultimate cost will be.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely yours,

ROGERS C. B. MORTON,
Secretary of the Interior.

Enclosure.

A BILL To provide for the cooperation between the Federal government and the States with respect to environmental regulations for mining operations, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Mined Area Protection Act of 1973".

TITLE I

SEC. 101. Definitions. For the purpose of this Act, the terms—

(a) "Secretary" means the Secretary of the Interior;

(b) "mining operations" means (1) activities conducted on the surface or underground for the exploration for, development of, or extraction of minerals, organic or inorganic, from their natural occurrences, including strip or auger mining, dredging, quarrying, open pit, in situ distillation or retorting and leaching; and (2) the cleaning, concentrating, refining, or other processing or preparation (excluding smeltering) and loading for interstate commerce of crude minerals at or near the mine site. It does not include the extraction of minerals in a liquid or gaseous state by means of wells or pipes unless the process includes in situ distillation or retorting. For the purpose of this Act, prospecting activities are excluded from this definition;

(c) "prospecting" means the first on-the-ground or airborne phase of a search limited to the gathering of evidence of mineralization of potential commercial worth and is not for the purpose of establishing mineral reserves. Prospecting includes geological reconnaissance, the use of geophysical and geochemical methods, and preliminary sampling but does not include the construction of access roads, mechanical trenching, construction of semi-permanent camp facilities or other activities which will result in appreciable disturbances to the natural condition of the area;

(d) "underground mining operations" means those mining operations carried out beneath the surface by means of shafts, tunnels, or other underground mine openings and such use of the adjacent surface as is incidental thereto;

(e) "surface mining operations" means those mining operations carried out on the surface, including strip, area strip, contour strip, or auger mining, dredging, and leaching, or any combination thereof, and activities related thereto;

(f) "open pit mining" means that surface mining method in which the overburden is removed from atop the mineral and in which, by virtue of the thickness of the deposits, mining continues in the same

area proceeding predominantly downward with lateral expansion of the pit necessary to maintain slope stability and necessary to accommodate the orderly expansion of the total mining operation. For the purposes of this Act, this definition shall include caving methods and leaching activities associated with open pit mining. For the purposes of this Act, the mining of surface coal deposits, except those relating to open pit anthracite coal operations, is excluded from this definition;

(g) "mined area" means the surface and subsurface of an area in which mining operations are being or have been conducted including private ways and roads appurtenant to any such area, land excavations, workings, refuse banks, tailings, spoil banks, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from or are used in, mining operations are situated;

(h) "operator of a mining operation" means an individual, society, joint stock company or a partnership, association, corporation, or other organization controlling or managing a mining operation;

(i) "previously mined area" means a mined area on which mining operations have been abandoned prior to the enactment of this Act or a mined area on which mining operations are abandoned subsequent to the enactment of this Act due to the impracticability of the mining operation under reclamation standards established by or under regulations pursuant to this Act;

(j) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam;

(k) "reclamation" means the process of restoring a mined area affected by a mining operation to its original or other similarly appropriate condition, considering past and possible future uses of the area and the surrounding topography and taking into account environmental, economic and social conditions; and

(l) "soil" means all of the overburden materials that overlay a natural deposit of minerals, organic or inorganic, and also means such overburden materials after removal from their natural state by mining operations.

Sec. 102. Congressional Findings and Declarations. The Congress finds and declares—

(a) that mining operations are essential activities affecting interstate commerce which contribute to the economic well-being, security and general welfare of the Nation;

(b) that there are mining operations on public and private lands in the Nation which adversely affect the environment by destroying or diminishing the availability of public and private land for commercial, industrial, recreational, agricultural, and forestry purposes, by causing erosion and landslides, by contributing to floods and the pollution of waters and air, by destroying fish and wildlife habitat and impairing natural beauty, by frustrating efforts to conserve soil, water and other natural resources, by destroying public and private property, and by creating hazards to life and property;

(c) that the initial and principal continuing responsibility for developing and enforcing environmental regulations for mining operations should rest with the States;

(d) that the cooperative effort established by this Act is necessary to the prevention and elimination of the adverse environmental effects of present and future mining operations; and

(e) that it is the purpose of this Act to encourage a nationwide effort to regulate mining operations to prevent or substantially reduce their adverse environmental effects, to stimulate and encourage the development of new, environmentally sound mining and reclamation techniques, and to assist the States in carrying out programs for those purposes.

TITLE II—ENVIRONMENTAL REGULATIONS FOR MINING OPERATIONS

SEC. 201. State Environmental Regulations for Mining Operations. (a) Each State, after public hearings and within two years of the date of enactment of this Act, may submit to the Secretary for review and approval or disapproval in accordance with this section State environmental regulations for mining operations on all lands within such State, except Federally-owned land or land held in trust by the United States for Indians. A State may at any time thereafter submit revisions to such regulations to the Secretary for review and approval or disapproval in accordance with this section. The Secretary shall approve the regulations or revision of such regulations submitted to him if in his judgment:

(1) the regulations require that, for any mining operation or mining operation activity, as defined in section 101(b), not in existence on the date of the Secretary's approval of the regulations, the operator proposing to initiate such operation or activity must obtain a permit prior to the commencement thereof from a State agency established to administer the regulations and provide that such a permit will be issued only after the operator (i) files a mining and reclamation plan describing the manner in which his reclamation activity will be conducted showing that such activity will be conducted in a manner consistent with the regulations and (ii) establishes to the satisfaction of the State agency that the operator has the physical and financial capacity to conduct his mining and reclamation activity in accordance with the reclamation plan;

(2) the regulations require operators of mining operations in existence on the date of the Secretary's approval of the regulations to obtain permits in accordance with paragraph (1) of this subsection within one year of such date, except that (i) permits issued for such operations may allow up to two years from the date of the Secretary's approval of the regulations for the operators to come into compliance with performance standards adopted or designated under paragraphs (b)(3), (b)(4), and (b)(5) of this section; and (ii) permits issued for such operations producing less than 10,000 tons per year of mine run material may allow departures from the performance standards for up to five years from the date of the Secretary's approval of the regulations, to the extent found by the State agency to be necessary on the basis of the small size of such operations, their significance to the local economy, and the extent of possible environmental damage;

(3) the regulations contain requirements designed to insure that the mining operation (i) will not result in a violation of applicable water or air effluent or emission standards and regulations, (ii) will control or prevent erosion or flooding, release of toxic substances, accidental subsidence of mined areas or land or rock slides, underground, outcrop, or refuse bank fires, damage to fish, or wildlife or their habitat, or public or private property, and hazards to public health and safety, and (iii) will be in conformance with any State land use planning process or program;

(4) the regulations require reclamation of mined areas and that reclamation work be performed as an integral part of the mining operation and be completed within reasonable prescribed time limits, and that, in the case of mining operations for which the Secretary has adopted performance standards; except that in order to encourage the reworking and reclamation of previously mined areas, the regulations may allow reclamation to depart from the specifications adopted by the Secretary pursuant to subsection (b)(3)(ii) in those individual cases where the State determines that the cost of reclamation on a previously mined area in strict compliance with such specifications is impracticable, and that the environmental quality of the entire permit area would, on balance, be clearly enhanced;

(5) the regulations allow the State agency, in order to encourage advances in mining and reclamation practices, to authorize departures in individual cases on an experimental basis from the specifications adopted by the Secretary pursuant to subsection (b)(3)(ii) of this section, if the experimental practices are potentially more or at least as environmentally protective, during and after mining operations, as those required by such specifications, and if the mining operation is no larger than necessary to determine the effectiveness and economic feasibility of the experimental practices;

(6) the regulations require posting of performance bonds or other equally appropriate financial arrangements, in amounts and upon conditions at all times sufficient to insure the reclamation of mined areas in the event that the regulations are not complied with or that reclamation is not completed in accordance with the mining and reclamation plan;

(7) the regulations provide for filing, updating, and permanent retention of engineering maps of all active surface and underground mining operations and of all inactive surface and underground mining operations for which engineering or other maps are available;

(8) the regulations provide that the responsible State agency will identify areas or types of areas in the State which, if mined, cannot be reclaimed with existing techniques to satisfy applicable performance standards adopted by the Secretary, and that the State agency will not issue permits to mine such areas until it determines that the technology is available to satisfy applicable performance standards;

(9) the regulations provide that regular reports will be made to the Secretary concerning the progress made by the State in carrying out the purposes of this title;

(10) the regulations require operators to make periodic reports to the responsible State agency, showing the progress of mining operations and of all required reclamation activities, and require regular monitoring by the State agency of environmental changes in mined areas to assess the effectiveness of the environmental regulation for mining operations;

(11) the regulations designate a single agency, or with the Secretary's approval, an interstate organization upon which the responsibility for administering and enforcing the regulations is conferred by the State or States and will insure full participation of those agencies responsible for State land use planning and management, air quality, water quality and other areas of environmental protection;

(12) the State agency or interstate organization responsible for the administration and enforcement of the regulations has vested in it the regulatory and other authorities necessary to carry out the purposes of this Act including, but not limited to, the authority to obtain the cessation of mining operations for violation of applicable laws and regulations adopted pursuant to this Act;

(13) the regulations were developed with full participation of all interested Federal departments and agencies, State agencies, local governments, and other interested bodies and groups;

(14) the regulations provide for regular review and updating, and for public notice and an opportunity for public participation in their revision;

(15) funding and manpower are or will be committed to the administration and enforcement of the regulations sufficient to carry out the purposes of this title;

(16) the regulations are authorized by law and will become effective no later than sixty days after approval by the Secretary;

(17) training programs will be established, as necessary, for persons engaged in mining operations and in enforcement of environmental regulations;

(18) the regulations are compatible to the maximum extent practicable with approved regulations of adjacent States; and

(19) the regulations which are developed by the State agency to meet or exceed performance standards should consider in addition to relative degrees of environmental protection, the relative costs involved;

(b)(1) In choosing among specifications or other requirements which satisfy the performance standards in this subsection the Secretary shall consider in addition to the relative degrees of environmental protection, the relative costs involved.

(b)(2) The criteria set forth in subsection (a) of this section shall be further elaborated by the Secretary through guidelines which will be issued within 90 days after enactment of this Act and revised periodically as the Secretary deems appropriate.

(3) Within 180 days after enactment of this Act, the Secretary shall by regulation adopt performance standards for the reclamation of mined areas affected by surface mining operations. Those performance standards shall include specifications that will ensure (i) that mined areas will be returned, as soon as feasible, to their original contour or to a contour similarly appropriate considering the surrounding topog-

raphy and possible future uses of the areas; (ii) that there is no deposition of spoil material, except as necessary to the original excavation of earth in a new mining operation, on the undisturbed or natural surface within or adjacent to the mined area, and that reclamation be conducted concurrently with the mining operation; except that the State agency may allow departures from such specifications either through a State approved program pursuant to (a)(5) of this section or if the operator demonstrates that such departures will provide equal or better protection of life, property, and environmental quality; (iii) that throughout the mined area, soil conditions be stabilized and water management be conducted such that landslides are prevented, erosion is minimized, and water pollution by siltation and by acid, highly mineralized or toxic material drainage is minimized; and (iv) that the original type or similarly appropriate type of vegetation will be reestablished on the area disturbed by the mining operations as soon after the soil handling is completed as feasible. He shall revise all such performance standards periodically as necessary.

(4) Within 180 days after the enactment of this Act, the Secretary shall by regulation adopt performance standards for the reclamation of areas affected by open pit mining, taking into consideration the unique nature of such operations. Those performance standards should ensure (i) that new mined areas should be returned, to the extent feasible, to approximately their original contour or to a contour similarly appropriate considering the surrounding topography and possible future uses of the area; (ii) that, to the extent feasible, there is no permanent deposition of spoil material on undisturbed or natural surface within or adjacent to the mined area; (iii) that, throughout the permit area, soil conditions will be stabilized and water management conducted, such that landslides are prevented, erosion is minimized, and pollution of water, including that in water impoundments created by the mining operation, by siltation and by acid, highly mineralized and toxic material drainage is minimized; and (iv) that, to the extent feasible, original type or similarly appropriate type vegetation will be re-established on the disturbed land areas. He shall revise all such performance standards periodically as necessary.

(5) Within one year after enactment of this Act the Secretary shall by regulation adopt performance standards for reclamation of areas affected by underground mining operations in order to prevent, minimize or correct environmental harm, including standards for minimizing subsidence and the continuing discharge of acid, mineralized and toxic material drainage. He shall revise all such performance standards periodically as necessary.

(c) To advise the Secretary in developing guidelines and performance standards under subsection (b) of this section, there is established an Advisory Committee composed of representatives from the Departments of Agriculture and Commerce, the Environmental Protection Agency, the Tennessee Valley Authority and the Appalachian Regional Commission, the Council of State Governments, and such other representatives as the Secretary may designate. In order to ensure consistency with the purpose of the Clean Air Act and the Federal Water Pollution Control Act, the Secretary shall obtain the concurrence of the Administrator of the Environmental Protection

Agency in those aspects of the guidelines and regulations under subsection (b) which affect air or water quality.

(d) The Secretary shall not approve regulations submitted by a State pursuant to this section until he has solicited the views of Federal agencies principally interested in such regulations. In order to ensure consistency with the purposes of the Clean Air Act and the Federal Water Pollution Control Act, the Secretary shall obtain the concurrence of the Administrator of the Environmental Protection Agency in those aspects of each State's regulations which affect air or water quality. The Secretary shall approve or reject the State regulations within 180 days after such regulations are filed.

(e) If the Secretary approves the regulations or revision thereof submitted to him by a State for approval, he shall conduct a continuing review and evaluation of the effectiveness of the regulations and the administration and enforcement thereof. As a result of the evaluation and review the Secretary may determine that:

(1) the State has failed to enforce the regulations adequately;

(2) the State's regulations require revision as a result of experience or the guidelines on regulations issued by the Secretary pursuant to section 201(b); and

(3) the State has otherwise failed to comply with the purposes of this Act.

Upon making such determination the Secretary shall notify the State and suggest appropriate action, remedies, or revisions to the regulations affording the State an opportunity for a hearing. If within a reasonable time, as determined by the Secretary, the State has not taken appropriate action as determined by the Secretary, the Secretary shall withdraw his approval of the regulations, and issue regulations for such State under section 202 of this title. After withdrawal of his approval and pending the issuance of regulations under section 202, the Secretary may administer and enforce the State regulations. Following the issuance of regulations under section 202 and while they are in effect, the Secretary is authorized to administer and enforce such regulations within such State.

SEC. 202. Federal Regulation of Mining Operations.

(a) If, at the expiration of two years after the date of enactment of this Act, a State has failed to submit environmental regulations for mining operations, or has submitted regulations which have been disapproved and within such period has failed to submit revised regulations for approval, the Secretary shall promptly issue environmental regulations for mining operations within such State. The Federal regulations issued by the Secretary for a particular State shall meet the requirements of the principles set forth in subsections (a) and (b) of section 201 of this Act.

(b) Regulations under this section shall be issued pursuant to the Federal Rule Making Procedures set forth in 5 U.S.C. 553.

(c) The Secretary may from time to time revise such regulations in accordance with the procedure prescribed in 5 U.S.C. 553.

SEC. 203. Where the Secretary administers and enforces the program for the State, or when the Secretary administers and enforces State regulations under section 201(e) of this title, he shall recover the full cost of administering and enforcing the program through the use of mining permit charges to be levied against operators of mining operations within the State.

SEC. 204. Termination of Federal Regulations. If a State submits proposed State regulations to the Secretary after Federal regulations have been issued pursuant to section 202 of this title, and if the Secretary approves such regulations, such Federal regulations shall cease to be applicable to the State at such time as the State regulations become effective. Such Federal regulations, as changed or modified by the Secretary, shall again become effective if the Secretary subsequently withdraws his approval of the State regulations pursuant to subsection (e) of section 201 of this title.

SEC. 205. Inspections and Investigations. The Secretary is authorized to make such inspections and investigations of mining operations and mined areas as he considers necessary or appropriate to evaluate the administration and enforcement of any State's regulations, or to develop or enforce Federal regulations, or otherwise to carry out the purposes of this Act, and for such purposes authorized representatives of the Secretary shall have the right of entry to any mining operation and into any mined areas. In order to enforce the right of entry into a specific mining operation or mined area the Secretary may obtain a warrant from the appropriate district court to authorize such entry.

SEC. 206. Injunctions. At the request of the Secretary, the Attorney General may institute a civil action in a district court of the United States or a Federal District Court of the Commonwealth of Puerto Rico, the Virgin Islands, and Guam or the High Court of American Samoa for an injunction or other appropriate order (1) to prevent any operator of a mining operation from engaging in mining operations in violation of Federal regulations issued under section 202 of this title or State regulations which the Secretary is authorized to enforce under section 201(e) of this title; (2) to prevent an operator of a mining operation from placing in commerce the minerals produced by a mining operation in violation of State regulations approved under section 201 of this title; (3) to enforce a warrant issued under section 205 of this title; or (4) to collect a penalty under section 207(a) of this title. The district court of the United States or a Federal District Court of the Commonwealth of Puerto Rico, the Virgin Islands, and Guam or the High Court of American Samoa for the district in which such operator of a mining operation resides or is doing business shall have jurisdiction to issue such injunction or order.

SEC. 207. Penalties. (a) If any person fails to comply with any regulation issued under section 202 of this title for a period of fifteen days after notice of such failure, the Secretary may order cessation of such person's mining operations and such person shall be liable for a civil penalty of not more than $1,000 for each day of continuance of such failure after said fifteen days.

(b) Any person who knowingly violates any regulation issued pursuant to section 202 of this title shall, upon conviction, be punished by a fine not exceeding $10,000, or by imprisonment not exceeding one year, or both.

(c) The penalties prescribed in this section shall be in addition to any other remedies afforded by this title or by any other law or regulation.

SEC. 208. (a) Review of the Secretary's action in (i) promulgating any standards of performance under sections 201(b)(2), (b)(3), (b)(4), and (b)(5); and (ii) approving or disapproving a State

environmental regulations and standards or revision to those under section 201(a); may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such business upon application by such person. Any such application shall be made within 90 days from the date of such determination, approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such ninetieth day.

(b) Action of the Secretary with respect to which review could have been obtained under paragraph (a) of this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

SEC. 209. Research. The Secretary is authorized to conduct or promote research, or training programs to carry out the purposes of this title. In so doing, the Secretary may enter into contracts with institutions, agencies, organizations, or individuals and make grants to nonprofit organizations and collect and make available information resulting therefrom.

SEC. 210. Grants. (a) The Secretary is authorized to make a grant to any State for the purpose of assisting such State in developing, administering and enforcing environmental regulations under this title provided that such grants do not exceed 80% of the program development costs incurred during the year preceding approval by the Secretary and do not exceed 60% of the total costs incurred during the first year following approval, 45% during the second year following approval, 30% during the third year following approval and 15% during the fourth year following approval, at which time the Federal grants shall cease.

(b) The Secretary is authorized to cooperate with and provide nonfinancial assistance to any State for the purpose of assisting it in the administration and enforcement of its regulations. Such cooperation and assistance may include:

(1) technical assistance and training, including provision of necessary curricular and instructional materials, in the administration and enforcement of the State regulations or program; or

(2) assistance in preparing and maintaining a continuing inventory of mining operations and mined areas in such State for the purposes of evaluating the effectiveness of its environmental regulations for mining operations programs and identifying current and future needs of the State's activities under this Act.

SEC. 211. In extending technical assistance to States under section 210 and in the enforcement of regulations issued by the Secretary under section 202 concerning matters relating to the reclamation of areas affected by surface mining, the Secretary may utilize the services of the Secretary of Agriculture and the Administrator of the Environmental Protection Agency, and may transfer funds to cover the cost thereof.

SEC. 212. Any records, reports, or information obtained under this Act shall be available to the public, except that upon a showing satisfactory to the Secretary by any person that records, reports, or information, or particular part thereof, to which the Secretary had access under this Act if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Secretary shall consider such record, report, or information or particular portion

thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.

SEC. 213. Rules and Regulations. The Secretary is authorized to promulgate such rules and regulations as he considers necessary to carry out the provisions of this title.

SEC. 214. Authorization of Appropriations. There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out the provisions of this Act.

TITLE III

SEC. 301. (a) The heads of all Federal departments or agencies which have jurisdiction over land on which mining operations are permitted are authorized to promulgate environmental regulations to govern such mining operations. Such department or agency heads shall issue regulations to assure at least the same degree of environmental protection and reclamation on lands under their jurisdiction as is required by any law and regulation established under an approved State program for the State in which such land is situated. Each Federal department and agency shall cooperate with the Secretary and the States, to the greatest extent practicable, in carrying out the provisions of this Act.

(b) Nothing in this Act or in any State regulations approved pursuant to it shall be construed to conflict with any of the following Acts or with any rule or regulation promulgated thereunder:

(1) the Federal Metal and Nonmetallic Mine Safety Act (80 Stat. 772; 30 U.S.C. 721–740);

(2) the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742);

(3) the Federal Water Pollution Control Act (79 Stat. 903), as amended, the State laws enacted pursuant thereto, or other Federal laws relating to preservation of water quality;

(4) the Clean Air Act, as amended (79 Stat. 992; 42 U.S.C. 1857); and

(5) the Solid Waste Disposal Act, as amended (79 Stat. 997; 42 U.S.C. 3251).

SEC. 302. Separability. If any provision of this Act of the applicability thereof to any person or circumstance is held invalid the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., March 12, 1973.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs. U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of February 6, 1973, requesting the views of this Department on S. 425, a bill "To provide for the cooperation between the Secretary of the Interior

and the States with respect to the regulation of surface mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes."

S. 425 requires the States to develop a State program for the regulation of surface mining and reclamation operations consistent with Federal regulations, and authorizes Federal assistance in the development of such programs. It further provides for a Federal regulatory program in States which fail to develop and carry out an acceptable program. It also provides for treatment of abandoned and unreclaimed mined areas.

While recognizing that S. 425 has many desirable provisions, this Department recommends that the Administration's bill, S. 923, "Mined Area Protection Act of 1973," be enacted instead of S. 425. S. 923 is broader in scope, applying both to surface and underground mining. Furthermore, S. 923 assures that States adopt regulations in compliance with more stringent and specific performance standards.

The Office of Management and Budget advises that there is no objection to the presentation of this report and that enactment of S. 923 would be in accord with the President's program.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., March 13, 1973.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of February 6, 1973, for the views of the Office of Management and Budget on S. 425, a bill entitled the "Surface Mining Reclamation Act of 1973."

The Department of the Interior has recently submitted to the Congress a related bill, S. 923, entitled the "Mined Area Protection Act of 1973" and in the Department's report on S. 425, it recommends enactment of S. 923 in lieu of S. 425. Enactment of S. 923 would be in accord with the program of the President.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

X. CHANGES IN EXISTING LAW

Subsection (4) of rule XXIX of the Standing Rules of the Senate requires a statement of any changes in existing law made by the bill ordered reported. S. 425 as reported makes no amendment to or changes in existing laws.

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